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COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 7, 2008

Appearances:

Bernard Coffey, Q.C. Commission Co-counsel
Sandra Chaytor, Q.C. Commission Co-counsel
Mandy Woodland Commission Co-counsel

Rolf Pritchard/Jenny Chai Her Majesty in Right of NL

Peter Browne/Jane Hennebury Doctors Kara Laing et al

Daniel Simmons Eastern Regional Integrated
. Health Authority

Pamela Taylor. Members of the Breast Cancer
. Testing Class Action

Mark Pike NL Medical Association

Jennifer Newbury Canadian Cancer Society (NL Division)

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

LIST OF EXHIBITS

EXHIBITS P-0163 THROUGH P-0165 Pg. 6

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Certificate

1 THE COMMISSIONER:
2 Q. Please be seated. Good morning.
3 MR. PIKE:
4 Q. Good morning.
5 THE COMMISSIONER:
6 Q. Now we have a preliminary matter before we
7 proceed with the evidence today.
8 MR. PIKE:
9 Q. Mark Pike is my name, and I appear on behalf
10 of the Newfoundland and Labrador Medical
11 Association. On Friday last I forwarded to
12 the Commission for your attention my
13 application to participate in Part I of this
14 inquiry, and I forwarded copies of my
15 application to other counsel as well and I’ll
16 outline briefly in the correspondence the
17 basis for my application, so I ask that you
18 give your consideration and to grant our
19 request.
20 THE COMMISSIONER:
21 Q. Mr. Pike, as I understand it, you are seeking
22 in effect a limited status for this part.
23 MR. PIKE:
24 Q. That’s correct.
25 THE COMMISSIONER:

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1 Q. To deal with just one issue, and that is any
 2 matters relating to LNMA's role in responding
 3 to the information about the high rate of
 4 conversion.
 5 MR. PIKE:
 6 Q. At this stage, that's correct.
 7 THE COMMISSIONER:
 8 Q. Okay. Yes, I'm satisfied that in fairness
 9 that application should be granted on the
 10 understanding that it is, of course, the
 11 limited role that you have outlined and that
 12 the role that you have enunciated is an
 13 appropriate with appropriate limits. So
 14 welcome to the group, Mr. Pike.
 15 MR. PIKE:
 16 Q. Thank you, Commissioner. Relinquishing the
 17 chair to Mr. Coffey.
 18 THE COMMISSIONER:
 19 Q. Uh-hm. Mr. Coffey.
 20 COFFEY, Q.C.:
 21 Q. Thank you. Commissioner, Mr. Ottenheimer is
 22 back today.
 23 THE COMMISSIONER:
 24 Q. It's with our apologies for the delay, Mr.
 25 Ottenheimer.

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1 MR. OTTENHEIMER:
 2 A. I understood, Madam Commissioner.
 3 COFFEY, Q.C.:
 4 Q. And, Commissioner, there are certain other
 5 exhibits that I want to ask to be entered.
 6 Could I be advised as to how far up we've gone
 7 before? I just wanted to double check. My
 8 numbering takes me up to P-0162 where we were
 9 on the last day. Madam Commissioner, if we
 10 could, P-0163 through 0165, if I could have
 11 those entered, please.
 12 EXHIBITS ENTERED AND MARKED P-0163 THROUGH P-0165
 13 THE COMMISSIONER:
 14 Q. 0163 to 0165?
 15 COFFEY, Q.C.:
 16 Q. Yes. Okay. Commissioner, exhibit P-0300 to
 17 P-0308 - that's 0301, 0302, 0303, 0304, 0305,
 18 0306, 0306, 0307 and 0308.
 19 THE COMMISSIONER:
 20 Q. Yes.
 21 COFFEY, Q.C.:
 22 Q. Exhibit P-0310, 0311, 0312, 0313.
 23 THE COMMISSIONER:
 24 Q. So that would be P-0310, 0311 and 0313?
 25 COFFEY, Q.C.:

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1 Q. 0312 and 0313.
 2 THE COMMISSIONER:
 3 Q. So it's 0310 through 0313, respectively.
 4 COFFEY, Q.C.:
 5 Q. Yes, Commissioner. Yes, excluding P-0309.
 6 THE COMMISSIONER:
 7 Q. Okay. All other counsel has received copies
 8 of these documents, have they?
 9 COFFEY, Q.C.:
 10 Q. I certainly understand, Commissioner, that
 11 they have. I don't hear anything to the
 12 contrary.
 13 THE COMMISSIONER:
 14 Q. Those documents are entered.
 15 EXHIBITS ENTERED AND MARKED P-0301, P-0302, P-0303, P-
 16 0304, P-0305, P-0306, P-0307, P-0308, P-0310, P-0311, P-
 17 0312, P-0313
 18 MR. JOHN OTTENHEIMER, EXAMINATION BY BERNARD COFFEY, Q.C.
 19 - CONTINUED
 20 COFFEY, Q.C.:
 21 Q. Thank you. Now, well, if we could have--the
 22 last day, Mr. Ottenheimer, we were at P-0046
 23 when we ended. So if we just--Registrar,
 24 please bring that up. This is the report of
 25 Dr. Banerjee of October 17, 2005, and the

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1 report and the covering letter are dated the
 2 same date. When we were here last day, we
 3 were looking at--and I showed you on Page 4 of
 4 the exhibit P-0046 - say Page 4 of the exhibit
 5 P-0046 - under the heading, "Conclusions About
 6 the Reasons for Test Failure," and there are
 7 actually seven such reasons and we looked at a
 8 number of those. What we didn't get to is
 9 "Other System Flaws Observed," and that's by
 10 Dr. Banerjee, and he lists seven. And the
 11 first one of those is "A lack of dedicated
 12 immunohistochemistry technologists" and he
 13 goes on about that. "A lack of an officially
 14 designated pathologist as director of
 15 immunohistochemistry service." That's number
 16 two. Number three, "A lack of standard
 17 operating procedures from grossing fixation
 18 tissue processing block selection, positive
 19 control block selection, method optimization
 20 through systematic titration, incubation time
 21 and antigen retrieval time for each analite"
 22 and, four, "lack of sub-specialization among
 23 pathologists." And then it goes on about--
 24 five, "Disconnect between the Laboratory
 25 Program Direction, Division Manager, Clinical

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1 Site Chief, and Laboratory Director in
 2 decision-making." Six, "Attendance by both
 3 medical and technical at various conferences
 4 with a focus on new technology should be
 5 encouraged." And seven, the department needs
 6 dedicated pathology assistants to ensure gross
 7 room consistency on tissue handling, trimming
 8 and fixation. Now, sir, I appreciate--and I
 9 started to read Paragraph 5. Of course, it
 10 goes on at quite some length, other than what
 11 I read out, but I appreciate the references in
 12 #3, all those relatively technical terms. You
 13 wouldn't be conversant with that, those sorts
 14 of matters - for example, grossing fixation
 15 tissue processing, etcetera.

16 MR. OTTENHEIMER:
 17 A. That is correct.

18 COFFEY, Q.C.:
 19 Q. In terms of #5 where Dr. Banerjee refers to
 20 this "Disconnect between Laboratory Program
 21 Director, Division Manager, Clinical Site
 22 Chief and Laboratory Director in decision-
 23 making and he then talks about the
 24 organizational charts and what he interprets
 25 them to say. Did anyone in the fall of 2005 -

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1 the summer of 2005 or the fall of 2005 - bring
 2 to your attention the subject matter of a
 3 disconnect within the laboratory services
 4 management?

5 MR. OTTENHEIMER:
 6 A. No, they did not.

7 COFFEY, Q.C.:
 8 Q. Thank you. And if that was to be brought to
 9 your attention, you would expect in this
 10 context it would have been brought by whom?

11 MR. OTTENHEIMER:
 12 A. I guess, anybody. Eastern Health, presumably.

13 COFFEY, Q.C.:
 14 Q. Eastern Health, okay, or Eastern Health
 15 through your own officials.

16 MR. OTTENHEIMER:
 17 A. True.

18 COFFEY, Q.C.:
 19 Q. Okay. And then, finally, beginning on Page 5
 20 of that exhibit there are recommendations
 21 listed and there are a total of ten. Now if
 22 we could bring up, please, P-0047. Registrar,
 23 this is a document entitled "Quality Review of
 24 the Immunohistochemistry Laboratory, Health
 25 Care Corporation of St. John's," prepared for

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1 the leadership team of the Laboratory Medicine
 2 Program, Health Care Corporation of St. John's
 3 by Trish Wegrynowski, who is a pathology
 4 consultant, her address--November 9, 2005,
 5 okay? Now I understand that this was sent to
 6 St. John's in November of 2005 and was here.
 7 It was not on this document, but it was here
 8 in St. John's before your November 17th
 9 meeting. Okay? And this document--if we
 10 could turn, please, Registrar, to Page 20--
 11 Page 19, please, Page 19. We looked through
 12 this, Mr. Ottenheimer. The last
 13 recommendation on that page is Recommendation
 14 #42. And when you look through the whole
 15 document, they're sequentially numbered so
 16 they add up to 42. Did anyone during November
 17 2005 - October or November 2005 - indicate to
 18 you that there were 42 recommendations by the
 19 Chief Technologist Consultant?

20 MR. OTTENHEIMER:
 21 A. No.

22 COFFEY, Q.C.:
 23 Q. No. If you could turn to the next page of Ms.
 24 Wegrynowski's report--actually, not the next
 25 page, the last page of it - Page 21 of exhibit

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1 P-0047 -there's a Paragraph #8, Conclusion,
 2 and I'm just going to ask you to look down
 3 through this page. I'll direct your attention
 4 to certain parts of it, and she begins by
 5 saying "Rotating pathology assistants
 6 providing the grossing of large specimens
 7 which standardized the procedures between the
 8 two sites." In the context, it's the General
 9 Hospital and St. Clare's. "The consolidation
 10 of tissue processing at the HSC sites should
 11 be implemented. The consolidation would
 12 ensure all specimens are processed in the same
 13 manner." She goes on, "Procedure manuals must
 14 be written," and she ends that paragraph by
 15 saying, "Documentation must be done throughout
 16 the laboratory. Three non-rotating registered
 17 technologists to be employed in IHC with one
 18 appointed a level of responsibility. A
 19 Director the IHC should be appointed. It is
 20 essential the laboratory become involved in a
 21 Peer Assessment Program. Standardization of
 22 all processes will result in increased in
 23 reliability and reproducibility of IHC
 24 results, and the pathology lab is more than
 25 capable of attaining this degree of

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1 competency." Now, sir, during November of
 2 2005 or December of 2005, did anybody from
 3 Eastern Health ever purport to tell you what
 4 Ms. Wegrynowski had reported?
 5 MR. OTTENHEIMER:
 6 A. At no time do I recall and, you know, I would
 7 think, you know, these would relate clearly to
 8 operational issues at Eastern Health but I do
 9 not recall that information being shared with
 10 me personally.
 11 COFFEY, Q.C.:
 12 Q. Now, sir, you have told us last Monday that
 13 your understanding was that at some point you
 14 would be - and perhaps from time to time even
 15 - would be advised as to what had been found
 16 generally, at least in a general way, as to
 17 the reasons for the problem. Is that true?
 18 MR. OTTENHEIMER:
 19 A. I would have had anticipated that upon
 20 completion of the consultant's review and the
 21 work that was being carried out at Eastern
 22 Health that I would be advised fully of the
 23 findings that would help me have a greater
 24 understanding as to what occurred, yes.
 25 COFFEY, Q.C.:

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1 Q. Sir, if you could turn, please, to exhibit P-
 2 0101 and, sir, I appreciate that--I suspect
 3 you've never seen this letter. It is a letter
 4 of December 7, 2005. It's addressed--it's
 5 three pages long. It's addressed and signed
 6 by Beverly Carter, an MB. She's addressed it
 7 to Dr. Robert Williams, Vice-President,
 8 Medical Services, St. John's. You were being
 9 briefed throughout the fall of 2005 by Dr.
 10 Williams, were you not?
 11 MR. OTTENHEIMER:
 12 A. Yes, he would be present from time to time at
 13 several of these meetings.
 14 COFFEY, Q.C.:
 15 Q. And what was your sense of what his position
 16 in all this was?
 17 MR. OTTENHEIMER:
 18 A. I would think it's fair to say that he played
 19 a lead role on this particular issue and,
 20 again, would be present at most times when I
 21 would be asked for a briefing on this issue.
 22 COFFEY, Q.C.:
 23 Q. Now, sir, if you look at the third line of
 24 this--no, actually, I'm going to read perhaps
 25 the first six lines to you. So, I take it,

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1 you've never seen this letter before.
 2 MR. OTTENHEIMER:
 3 A. I've never seen this letter.
 4 COFFEY, Q.C.:
 5 Q. Okay. It says "I was most recently asked by
 6 Dr. Donald Cook to comment on the suggestion
 7 of Mr. Barry Dyer that stated that he felt the
 8 Ventana system for estrogen receptor,
 9 progesterone receptor and HER2/neu could be
 10 started at any time. I find this comment
 11 quite startling in the face of two fairly
 12 damning reports sent by Dr. Banerjee and Trish
 13 Wegrynowski on their review of our
 14 immunohistochemistry laboratory with special
 15 emphasis on the predictive factors for breast
 16 cancer patients." Okay? Now there has been
 17 some evidence and there will be certainly a
 18 considerable amount more that Beverly Carter,
 19 as a pathologist, and in fact has an extensive
 20 knowledge of breast pathology - with that in
 21 mind, as the Minister responsible for Health,
 22 in November--well, October, November, December
 23 of 2005 and January 2006, would you have liked
 24 to have known that perhaps the only breast
 25 pathologist in Newfoundland had told Dr. Bob

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1 Williams, at least in her view, these were two
 2 fairly damning reports, those reports we just
 3 looked at?
 4 MR. OTTENHEIMER:
 5 A. I would consider that information that would
 6 be important to me as Minister of Health and
 7 Community Services, yes.
 8 COFFEY, Q.C.:
 9 Q. Can you think of any reason, from your
 10 perspective, any rational reason why you were
 11 not so advised?
 12 MR. OTTENHEIMER:
 13 A. I would have to leave that, Mr. Coffey, to
 14 others. I don't know.
 15 COFFEY, Q.C.:
 16 Q. You can't think of any yourself.
 17 MR. OTTENHEIMER:
 18 A. That's correct.
 19 COFFEY, Q.C.:
 20 Q. Now if we could, please, Registrar, I would
 21 like to turn to exhibit P-0312. Commissioner,
 22 we've not seen this exhibit before. Mr.
 23 Ottenheimer, P-0312 is an exhibit that is five
 24 pages long. It deals with--it's a series of
 25 e-mails and they deal with--or are all dated

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1 July 19, 2005. Sir, you have already told us
 2 that you had lunch with Mr. Tilley that day.
 3 It's in your appointment calender.
 4 MR. OTTENHEIMER:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. Have you had an opportunity before coming
 8 here, like today or this morning, to review
 9 these e-mails?
 10 MR. OTTENHEIMER:
 11 A. I saw these e-mails for the first time three
 12 days ago, Friday past.
 13 COFFEY, Q.C.:
 14 Q. Thank you. And I can tell that the Commission
 15 Council saw them for the first time, oh, I
 16 suppose late Monday night, or early Tuesday
 17 morning actually in my case last week.
 18 MR. OTTENHEIMER:
 19 A. Uh-hm.
 20 COFFEY, Q.C.:
 21 Q. And having reviewed them, would the contents
 22 of any of these in any way refresh your memory
 23 as to what went on on July 19, 2005?
 24 MR. OTTENHEIMER:
 25 A. For me personally, it does not. As I

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1 mentioned last Monday when questioned on this,
 2 I met with Mr. Tilley that lunchtime on the
 3 19th. Exactly where, I cannot be specific on
 4 that date because it conflicts with another
 5 time that I had met with him over the lunch
 6 hour but--so it doesn't help in my own
 7 personal recollection but, as I say, I was
 8 shared these e-mails for the first time three
 9 days ago.
 10 COFFEY, Q.C.:
 11 Q. Now, sir, the first of them, Exhibit P-0312,
 12 page 1, is from a person, they're all printed
 13 out from Robert Thompson's e-mail system, but
 14 this e-mail is from Gary Cake, it's sent
 15 Tuesday, July 19th, 2005 at 10:32 a.m. It's
 16 to Robert Thompson. The subject is "Major
 17 Health Matter", the categories, it's from a
 18 "Folder: GroupWise Archive Inbox" and it
 19 begins, "Robert, Carolyn Chaplin just called
 20 from HCS to provide a heads up that a major
 21 story will break from the Eastern Health Board
 22 as early as this Thursday but more likely next
 23 Monday. The Eastern Health Board has recently
 24 discovered errors in its breast cancer testing
 25 program. This matter affects clients who were

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1 subject to breast cancer testing from 1997 to
 2 April, 2004. I understand that an estimated
 3 1200 to 1500 clients will need to be retested.
 4 The Eastern Health Board is currently working
 5 on a strategy for communicating this news to
 6 affected clients and the public at large.
 7 Legal advise is being engaged in this process.
 8 HCS," which I take it is Health and Community
 9 Services, "will be advised of the
 10 communication strategy. A briefing note is
 11 currently being prepared. Carolyn has also
 12 alerted Elizabeth to this matter." Signed,
 13 "Gary." Now, in this context Carolyn Chaplin
 14 was your Director of Communications?
 15 MR. OTTENHEIMER:
 16 A. She was Director of Communications for the
 17 Department, correct.
 18 COFFEY, Q.C.:
 19 Q. Department. And within the Department at the
 20 time, in terms of communications there was
 21 her?
 22 MR. OTTENHEIMER:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. And Deborah Pennell, there were just two of

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1 them?
 2 MR. OTTENHEIMER:
 3 A. I can't recall specifically if Ms. Pennell
 4 were there at that time. She was there at one
 5 point when I was there as Minister. And there
 6 was also another communications specialist,
 7 Stephanie Power, who was there at a point in
 8 time. And, of course, after Ms. Chaplin had
 9 left, she was replaced by Tansy Mundon in
 10 communications. So exactly who was there at a
 11 particular point in time, I cannot be clear,
 12 but clearly, Carolyn was the director at this
 13 time.
 14 COFFEY, Q.C.:
 15 Q. Now, would you have--how closely would you
 16 have worked with Carolyn?
 17 MR. OTTENHEIMER:
 18 A. Relatively closely. I found her to be a very
 19 competent director and I think it's fair to
 20 say was a very informed on health issues. I
 21 found her--we had a good working relationship
 22 and there would--you know, there was a good
 23 relationship in terms of me respecting her
 24 ability in the position that she held as
 25 Director of Communications for the Department,

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1 which is a very large department, as we talked
 2 about last week.
 3 COFFEY, Q.C.:
 4 Q. So I take it that it's part of her role was to
 5 keep you apprised of what she knew?
 6 MR. OTTENHEIMER:
 7 A. Generally speaking. That may or may not have
 8 occurred at all times, but I think it's fair
 9 to say that generally speaking that that would
 10 occur.
 11 COFFEY, Q.C.:
 12 Q. Okay. To put this in context, because I'm
 13 going to go through these and I'm going to
 14 come back and ask you some questions, if I
 15 could. Page 2 of P-0312 is an e-mail from
 16 Robert Thompson, Tuesday, July 19th, 2005 at
 17 10:49 a.m., it's to Brian Crawley. The
 18 subject is "Forward, Major Health Matter," the
 19 categories are "Folder: GroupWise Archive\-\n
 20 SENT," And the attachments are "Major Health
 21 Matter.txt." There's obviously an attachment.
 22 And Mr. Thompson writes to Mr. Crawley, "This
 23 is major. Once the solution is set in motion,
 24 we will expect the Department and the Board to
 25 undertake appropriate evaluation to determine

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1 why this happened." Signed, "Robert." Now,
 2 who is Brian Crawley?
 3 MR. OTTENHEIMER:
 4 A. Brian Crawley is the Chief of Staff in the
 5 Premier's office.
 6 COFFEY, Q.C.:
 7 Q. So he's the Premier's Chief of Staff?
 8 MR. OTTENHEIMER:
 9 A. Correct.
 10 COFFEY, Q.C.:
 11 Q. Looking, if we could go back to page 1 because
 12 I forgot to ask you, in the context here, at
 13 that time, July 19th, 2005 this ends with Gary
 14 telling Robert, "Carolyn has also alerted
 15 Elizabeth to this matter." Do you have any
 16 idea who the Elizabeth would be here?
 17 MR. OTTENHEIMER:
 18 A. I'm assuming it's referring to Elizabeth
 19 Matthews that would be the Communications
 20 Director at the Premier's office.
 21 COFFEY, Q.C.:
 22 Q. Okay. Suggesting that before Gary presumably
 23 spoke to Carolyn, because he phrased it, he
 24 opens by saying "Carolyn just called," and
 25 "she has also alerted Elizabeth," so

Page 23

1 presumably you would take from that that she
 2 probably had talked to Elizabeth before she
 3 did Gary?
 4 MR. OTTENHEIMER:
 5 A. Presumably, which was my understanding in my
 6 evidence last week when I had indicated that
 7 around the time when I became aware of this
 8 issue for the very first time, which was that
 9 day in discussions with Mr. Tilley on the 19th
 10 of July, that it was my understanding that
 11 there had been contact made by Carolyn Chaplin
 12 to Central Agencies. So that appears to be
 13 consistent with, from a time line point of
 14 view.
 15 COFFEY, Q.C.:
 16 Q. If we could, please, Exhibit P-0312, page 3?
 17 Now this is an e-mail from Robert Thompson,
 18 Tuesday, July 19th, 2005 at 10:51 a.m. to Gary
 19 Cake. The subject is "Re Major Health
 20 Matter." It's taken from categories "Folder:
 21 GroupWise Archive\-\n
 22 SENT." And when you look
 23 toward the bottom of the page there, Mr.
 24 Ottenheimer, you'll see that the e-mail that
 25 Mr. Cake has sent to Robert Thompson at 10:32
 that morning appears below, so this appears to

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1 be a response by Mr. Thompson to Mr. Cake. He
 2 opens with, "Thanks. Please ensure the
 3 Department and the Board include in their com
 4 plan the assurance that once the solution is
 5 set in motion that an evaluation will be done
 6 to determine the specific or systemic reasons
 7 why this occurred so that the matter will be
 8 properly addressed in the long term. I'd like
 9 to see this aspect before it goes out.
 10 Thanks." So Robert Thompson at the time is--
 11 holds what position?
 12 MR. OTTENHEIMER:
 13 A. At that time he would be the Secretary to
 14 Cabinet.
 15 COFFEY, Q.C.:
 16 Q. And in a practical sense what does that mean?
 17 Is he the chief civil servant in the Province?
 18 MR. OTTENHEIMER:
 19 A. He's the top civil servant, correct.
 20 COFFEY, Q.C.:
 21 Q. And as the top civil servant what would your
 22 understanding be about his authority to give
 23 direction to his subordinates?
 24 MR. OTTENHEIMER:
 25 A. I would think he would have clear authority to

Page 25

1 do that.
 2 COFFEY, Q.C.:
 3 Q. And here he's telling Mr. Cake, and just to
 4 put it in context, do you know who Mr. Cake
 5 was or is?
 6 MR. OTTENHEIMER:
 7 A. At that time I don't know specifically what
 8 position that he held. He works within
 9 Cabinet Secretariat and most recently worked
 10 in the area of social policy. But his exact
 11 title at that particular date, I cannot be, I
 12 cannot be accurate.
 13 COFFEY, Q.C.:
 14 Q. Okay. But he worked up in Robert Thompson's
 15 office, as it were?
 16 MR. OTTENHEIMER:
 17 A. That's correct.
 18 COFFEY, Q.C.:
 19 Q. Okay. And now for Robert Thompson to tell
 20 Gary Cake, "Please ensure the Department and
 21 the Board include in their com plan" certain
 22 assurance, and he goes on to spell it out.
 23 The Department, I take it, was your
 24 Department?
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. That would be correct?
 4 MR. OTTENHEIMER:
 5 A. Correct.
 6 COFFEY, Q.C.:
 7 Q. And the Board in this context presumably would
 8 be Eastern Health?
 9 MR. OTTENHEIMER:
 10 A. That's correct.
 11 COFFEY, Q.C.:
 12 Q. And the idea that Robert Thompson, in his role
 13 as the chief civil servant in the Province,
 14 would be directing that your Department and
 15 Eastern Health include in their com plan,
 16 would be communications plan, certain
 17 assurances and that he wanted to review that
 18 aspect before it goes out. Now, on July 19th,
 19 2005, bearing in mind your understanding of
 20 your role, the clerk, Mr. Thompson's role, the
 21 role of his office, would you be surprised to
 22 see this kind of a direction?
 23 MR. OTTENHEIMER:
 24 A. As I say, I've seen these e-mails for the
 25 first time only on Friday. My name is not on

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1 them.
 2 COFFEY, Q.C.:
 3 Q. No.
 4 MR. OTTENHEIMER:
 5 A. They were never sent by me, nor received or
 6 copied, so I've seen these for the first time.
 7 It's difficult to assess exactly what other
 8 people are thinking or how they are responding
 9 -
 10 COFFEY, Q.C.:
 11 Q. I'm -
 12 MR. OTTENHEIMER:
 13 A. - on particular issues when you're not a party
 14 to the discussion or the conversation.
 15 COFFEY, Q.C.:
 16 Q. What I'm asking you is as the Minister at the
 17 time, yourself -
 18 MR. OTTENHEIMER:
 19 A. Yes, um-hm.
 20 COFFEY, Q.C.:
 21 Q. - in terms of your view of your role and Mr.
 22 Thompson's role how at the time you would have
 23 understood his authority, whether he had it or
 24 not, to direct that your Department and
 25 Eastern Health do certain things?

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1 MR. OTTENHEIMER:
 2 A. I would think that as the top civil servant
 3 and role in the Cabinet process, I would think
 4 any recommendation or suggestion by Mr.
 5 Thompson is something that not only my
 6 department but I'm sure any department would
 7 take seriously.
 8 COFFEY, Q.C.:
 9 Q. Now, the insertion that "Include in their com
 10 plan," communications plan, certain things.
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. That would be an operational matter, wouldn't
 15 it?
 16 MR. OTTENHEIMER:
 17 A. That would be an operational matter from
 18 Eastern Health's point of view, that is
 19 correct.
 20 COFFEY, Q.C.:
 21 Q. How about from the Department's perspective?
 22 MR. OTTENHEIMER:
 23 A. It would certainly from an operational point
 24 of view, I mean, I clearly made that
 25 distinction throughout, not only on this

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1 important issue, but, indeed, many issues that
 2 operationally this role was the responsibility
 3 of Eastern Health and that was my view, as I
 4 say, particularly throughout this issue.
 5 COFFEY, Q.C.:
 6 Q. So Mr. Thompson apparently here is telling
 7 your Department and the Board to do something
 8 in an operational sense, both, both?
 9 MR. OTTENHEIMER:
 10 A. That could be his interpretation, but
 11 obviously he would--I guess, Mr. Coffey, he'd
 12 be the best person to ask on that point.
 13 COFFEY, Q.C.:
 14 Q. And I will be, okay. And I appreciate that.
 15 But, so this has happened before 11 a.m. that
 16 morning and you haven't yet had lunch with Mr.
 17 Tilley. You understand the context here?
 18 MR. OTTENHEIMER:
 19 A. Yes, of course.
 20 COFFEY, Q.C.:
 21 Q. Okay. With respect to Exhibit P-0312, if we
 22 could look at page 5, please? This is an e-
 23 mail from Carolyn Chaplin sent Tuesday, July
 24 19th, 2005 at 2:37 p.m. to Gary Cake. It's
 25 cc'd or copied to John Abbott, who would be

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1 the Deputy Minister at the time, I take it?
 2 MR. OTTENHEIMER:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. The subject is "Re: Update - Eastern Health
 6 Matter." And Carolyn writes, "Gary, further
 7 to this morning and incoming information this
 8 afternoon no action is required at this time.
 9 We have arranged a briefing with the Health
 10 Authority for the latter part of this week and
 11 will be in a better position to forward
 12 relevant briefing materials at that time. No
 13 public announcement will be forthcoming this
 14 week and there is a possibility that the
 15 significance of any announcement will be
 16 minimized." And then just to complete a
 17 reference to Exhibit P--well, at least July
 18 19th's portion of 0312, if you go back to page
 19 4, please, Registrar? This is an e-mail from
 20 Gary Cake Tuesday, July 19th, 2005 2:51 p.m.
 21 It's to Robert Thompson. The subject is
 22 "Forward Re: Update Eastern Health Matter."
 23 Certain categories are mentioned there. And
 24 then there's attachments, "Re: Update Eastern
 25 Health Matter.txt." And Mr. Cake writes,

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1 "Robert, FYI," which I presume means for your
 2 information, and signs it "GC," which would be
 3 Gary Cake. And I gather he's forwarding then
 4 Carolyn Chaplin's e-mail of 2:37 p.m. One
 5 other point on this. Just one moment, please,
 6 Commissioner.
 7 THE COMMISSIONER:
 8 Q. While Mr. Coffey is searching for something,
 9 can we go back to page 3 for a moment just to
 10 clarify a point you made, and that's on the
 11 matter of the role of Mr. Thompson in this
 12 whole thing, or maybe it's his role generally
 13 is really what I want to understand. Because
 14 it seems to me that, as I understood what you
 15 were saying last week, in any event, it would
 16 not be unusual that if something of this
 17 nature came to the attention of your
 18 Department, either you or Ms. Chaplin would
 19 give a heads up, as it were, to Cabinet
 20 Secretariat or the Premier's office or--and
 21 that would not be unusual practice?
 22 MR. OTTENHEIMER:
 23 A. Um-hm.
 24 THE COMMISSIONER:
 25 Q. But Mr. Thompson's e-mail on the issue of how

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1 the communication should take place doesn't
 2 use the language, shall we say, that comes
 3 across as a suggestion of what's helpful
 4 (phonetic), it comes across as a directive.
 5 MR. OTTENHEIMER:
 6 A. Um-hm.
 7 THE COMMISSIONER:
 8 Q. In the structure of things, does a person in
 9 that position have the authority to give
 10 directives to departments or boards as to how
 11 they should carry out matters?
 12 MR. OTTENHEIMER:
 13 A. I would think more in the way, Madam
 14 Commissioner, of in an advisory capacity. I
 15 would think it's unlikely that in the position
 16 of Mr. Thompson, for example, that he would
 17 direct a board.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 MR. OTTENHEIMER:
 21 A. He would certainly, I think, as the senior
 22 civil servant in his role in Cabinet
 23 Secretariat would play a collaborative role
 24 and an advisory role in working with the
 25 Department. As the top civil servant I would

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1 think there's a very active and frequent
 2 relationship between his office and the role
 3 of all deputy ministers of government. And I
 4 would think that conversations between Mr.
 5 Thompson at that time and any deputy minister,
 6 as I say, would be frequent. And it's my
 7 understanding they meet on a weekly basis. So
 8 it's, I would think it's less of a role of
 9 direction, but more of a role, an advisory
 10 role, a role of assistance, a role to, you
 11 know, work with departments with a view to
 12 seeking some solutions, obviously, if a
 13 problem exists. That would be my
 14 understanding of the role.

15 THE COMMISSIONER:
 16 Q. Sorry, Mr. Coffey.
 17 COFFEY, Q.C.:
 18 Q. No, thank you, Commissioner. P-0135. Now, if
 19 you look toward the bottom of the page, Mr.
 20 Ottenheimer, there's an e-mail at the bottom
 21 of the page. The original message is from
 22 John Abbott, sent, and the word "none" is
 23 there, N-O-N-E, where normally you'd have the
 24 day, date and time. It's to George Tilley,
 25 copied to Carolyn Chaplin, subject is

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1 "Briefing of Minister," and it says, "George,
 2 we would like for you and the appropriate
 3 staff to brief the Minister on Thursday at 9
 4 a.m. respecting the," presume it should say
 5 "testing issue affecting breast cancer
 6 patients at Eastern Health. It would be
 7 appreciated that you forward a briefing note
 8 to me on Wednesday prior to the briefing.
 9 Thank you. Please call if any questions."
 10 Signed, "John Abbott." And I'm advised, and I
 11 apologize, Commissioner, the actual copy with
 12 the date and time that that e-mail was sent am
 13 in the process of locating, but I have been
 14 advised before, and I don't think anyone is
 15 going to take any issue with it, because I
 16 want to broach this topic now with Mr.
 17 Ottenheimer -

18 THE COMMISSIONER:
 19 Q. On the understanding that the document with
 20 the detail will be provided in due course?
 21 COFFEY, Q.C.:
 22 Q. Yes, Commissioner. I hope, actually, by after
 23 lunch.
 24 THE COMMISSIONER:
 25 Q. Okay.

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1 COFFEY, Q.C.:
 2 Q. I hope so. That that e-mail was sent before 2
 3 p.m. on July 19th, it was sent, John Abbott by
 4 Tuesday just before 2:00 was asking George
 5 Tilley to arrange a briefing for you on
 6 Thursday morning at 9 a.m. And that, of
 7 course, when we look at Exhibit P-0312, page
 8 5, you'll notice here Carolyn at 2:37, Carolyn
 9 Chaplin is telling Gary Cake that in the
 10 second sentence she says, "We have arranged a
 11 briefing with the Health Authority for the
 12 latter part of this week." Suggesting that by
 13 2:37 p.m. the timing of your briefing on
 14 Thursday, Mr. Ottenheimer, had been arranged,
 15 okay.

16 MR. OTTENHEIMER:
 17 A. That could be.

18 COFFEY, Q.C.:
 19 Q. Yes. Now, sir, now looking at those e-mails
 20 and the timing of setting up the briefing for
 21 yourself, apparently the setting up of the
 22 briefing, if I understand the--Mr. Abbott--Mr.
 23 Tilley's e-mail just before 2 p.m. would have
 24 been after lunch, after you'd had lunch with
 25 Mr. Tilley. I take you back to that morning.

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1 Carolyn Chaplin that morning apparently
 2 contacted Elizabeth Matthews, the Premier's
 3 Director of Communications, and Gary Cake, who
 4 was in the Cabinet Secretariat, to let them
 5 know that there had been, at that time, an
 6 estimated 1200 to 1500 clients who would need
 7 to be retested because the Health Board had
 8 recently discovered errors in its breast
 9 cancer testing program and the matter affected
 10 patients subject to breast cancer testing from
 11 1997 to April, 2004. So put in that context
 12 and with just that information would that be a
 13 major health issue and readily recognized as
 14 one?

15 MR. OTTENHEIMER:
 16 A. I don't recall that exact number being
 17 discussed with me on the 19th when I met with
 18 Mr. Tilley, but I do, but I do recall -

19 COFFEY, Q.C.:
 20 Q. I'm asking you about Carolyn Chaplin now.
 21 MR. OTTENHEIMER:
 22 A. Yeah.
 23 COFFEY, Q.C.:
 24 Q. Carolyn Chaplin is your Director of
 25 Communications and that morning she has

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1 contacted Cabinet Secretariat and Elizabeth
 2 Matthews.
 3 MR. OTTENHEIMER:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. About apparently she understands is going to
 7 be, her understanding, a major story would
 8 break on Thursday, in two days time, or at the
 9 earliest and within six days, at the latest,
 10 the following Monday. So does that refresh
 11 your memory at all as to what went on that
 12 morning in terms of your dealings with
 13 Carolyn, your dealings with John Abbott, your
 14 dealings with Moira Hennessey, if any, your
 15 dealings with Darrell Hynes?
 16 MR. OTTENHEIMER:
 17 A. I don't recall, Mr. Coffey, specifically any
 18 detail. I mean, it is quite possible that
 19 there was some discussion prior to the
 20 luncheon. I'm not saying that that did not
 21 happen. I mean, again, this has to be put in
 22 the context, Mr. Coffey, and I referred to it
 23 last week, of an extremely busy department
 24 with many, many issues of public concern, one
 25 meeting following another, one briefing taking

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1 place following another. It is quite possible
 2 that in passing one another in the office
 3 there may have been some reference point.
 4 That is quite possible. And the issues in
 5 that department, they are all crisis issues
 6 from time to time and it's just difficult to
 7 be specific in my recollection of what may or
 8 may not have been said by any official in the
 9 Department of Health. What I can recall, and
 10 I believe I explained that to some degree last
 11 week, was the initial meeting of sorts with
 12 Mr. Tilley on the 19th -
 13 COFFEY, Q.C.:
 14 Q. Yeah, I'll get to that in a moment, okay, in
 15 terms of -
 16 MR. OTTENHEIMER:
 17 A. No, but I think it's important, Mr. Coffey,
 18 you've asked the question and, you know, I'd
 19 like the opportunity to -
 20 COFFEY, Q.C.:
 21 Q. You can go right ahead, sir.
 22 MR. OTTENHEIMER:
 23 A. - complete my answer. You know, there was a
 24 meeting on the 19th. I was looking forward to
 25 the full briefing which was to take place a

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1 couple of days later, on the 21st, with the
 2 help of a briefing note that was prepared and
 3 dated for the 20th of July. And you know,
 4 that is the sequence of events that I recall.
 5 And that briefing, as I indicated again last
 6 week, was for me an important informational
 7 exercise because with the help of the medical,
 8 professional advice that I was provided,
 9 despite my preference that we go public
 10 immediately, the professional medical advice
 11 that was provided was to do otherwise, and I
 12 accepted that.
 13 COFFEY, Q.C.:
 14 Q. Now, if we could come back, Mr. Ottenheimer,
 15 to that day.
 16 MR. OTTENHEIMER:
 17 A. Um-hm.
 18 COFFEY, Q.C.:
 19 Q. Because you hadn't obtained any professional
 20 medical advice on July 19th?
 21 MR. OTTENHEIMER:
 22 A. Um-hm.
 23 COFFEY, Q.C.:
 24 Q. You agree?
 25 MR. OTTENHEIMER:

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1 A. On the 19th?
 2 COFFEY, Q.C.:
 3 Q. On the 19th.
 4 MR. OTTENHEIMER:
 5 A. That is correct because they were present, I'm
 6 assuming, for the first time on 21st at the
 7 briefing.
 8 COFFEY, Q.C.:
 9 Q. So we can leave professional medical advice
 10 out of the discussion right now, if I could,
 11 okay. I'm concentrating on the 19th, that
 12 Tuesday, okay.
 13 MR. OTTENHEIMER:
 14 A. Well, in the overall context, though, Mr.
 15 Coffey, I think it's important that we keep
 16 that in our minds. I mean, on a particular
 17 moment, on a particular day, maybe so, maybe
 18 not the case, but in the overall context of
 19 this very sensitive issue I think it's
 20 important that we keep all relevant facts and
 21 all information in our minds.
 22 COFFEY, Q.C.:
 23 Q. If would could go to Exhibit P-0312, page 5,
 24 please? Now at 2:37 p.m. that afternoon, your
 25 Director of Communications writes to Gary Cake

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1 and says, "No public announcement will be
 2 forthcoming this week." Now, did you know at
 3 that point, by 2:37 p.m., did you know that
 4 the plan to go public on Thursday or between
 5 Thursday and the following Monday, did you
 6 know that that had changed?
 7 MR. OTTENHEIMER:
 8 A. That question, I believe, was asked of me last
 9 week and my answer will be essentially the
 10 same, Mr. Coffey. I do not recall
 11 specifically that being discussed on the 19th.
 12 I don't recall that.
 13 COFFEY, Q.C.:
 14 Q. The sentence concludes: "And there is a
 15 possibility that the significance of any
 16 announcement will be minimized." Now, do you
 17 recall on July 19th being given the
 18 understanding and the reasons therefore as to
 19 why or how it could be concluded that the
 20 significance of any announcement might be
 21 minimized?
 22 MR. OTTENHEIMER:
 23 A. It's not clear in my own mind what that means
 24 and the interpretation of that reference.
 25 Again, Mr. Coffey, it's best that Ms. Chaplin

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1 be asked specifically as to why she would
 2 express that, in that way. Again, these are
 3 not my e-mails, they are not directed to me,
 4 they're not copied to me and Ms. Chaplin, who
 5 is a very capable communications director, I'm
 6 sure can answer that question much better than
 7 I can.
 8 COFFEY, Q.C.:
 9 Q. You may be sure--do you have any reason to
 10 think that?
 11 MR. OTTENHEIMER:
 12 A. Pardon me?
 13 COFFEY, Q.C.:
 14 Q. Any particular reason to believe that she will
 15 be able to answer better than you can?
 16 MR. OTTENHEIMER:
 17 A. From the point of view that it is her drafting
 18 and it's her writing, yes.
 19 COFFEY, Q.C.:
 20 Q. Now it's carbonated to John Abbott. Did you
 21 have any discussions with John Abbott that day
 22 about this?
 23 MR. OTTENHEIMER:
 24 A. On the 19th?
 25 COFFEY, Q.C.:

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1 Q. Yes.
 2 MR. OTTENHEIMER:
 3 A. I cannot recall specifically, it's quite
 4 possible, but I cannot recall specifically.
 5 COFFEY, Q.C.:
 6 Q. If John Abbott directed that this e-mail be
 7 sent -
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. What are the odds or what are the chances that
 12 he would have directed that such an e-mail be
 13 sent to the Cabinet Secretariat without
 14 informing you?
 15 MR. OTTENHEIMER:
 16 A. You say if he did or -
 17 COFFEY, Q.C.:
 18 Q. If he did, because I have some understanding
 19 of what may be forthcoming here.
 20 MR. OTTENHEIMER:
 21 A. Yeah, but according to this, this is an e-mail
 22 from Carolyn Chaplin to Mr. Cake, copied to
 23 Mr. Abbott.
 24 COFFEY, Q.C.:
 25 Q. Yes. If Mr. Abbott directed that that e-mail

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1 be sent, what are the odds or chances that he
 2 would have done so without telling you that he
 3 was doing so?
 4 MR. OTTENHEIMER:
 5 A. I would think that it is quite possible that
 6 that could have happened, but I cannot
 7 specifically recall.
 8 COFFEY, Q.C.:
 9 Q. So Mr. Ottenheimer, is it that, you know, you
 10 weren't told about the 1200 to 1500 patients
 11 that day?
 12 MR. OTTENHEIMER:
 13 A. In some of the references, in some of the
 14 briefing material, there's reference to
 15 approximately 350 tests that are done on an
 16 annual basis and we're talking, I know the
 17 years of concern initially were from the years
 18 2000 to 2004. So it is quite possible that is
 19 where that number comes from. As I say and
 20 that's only a thought that comes in my mind,
 21 giving some explanation as to how that figure
 22 is arrived at.
 23 COFFEY, Q.C.:
 24 Q. Actually, apparently Ms. Chaplin earlier that
 25 morning had told Mr. Cake that it was actually

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1 1997 to 2004, so she was apparently aware -
 2 MR. OTTENHEIMER:
 3 A. And that could be, again, Mr. Coffey, you
 4 know, these are not my pieces of information
 5 that were shared.
 6 COFFEY, Q.C.:
 7 Q. So if this in fact was going on and was
 8 information known within your department that
 9 day, it wasn't brought to your attention, is
 10 that--or are you saying it was and you don't
 11 recall or -
 12 MR. OTTENHEIMER:
 13 A. You know, the suggestion here is that
 14 something, you know, is almost as if, you
 15 know, there's inappropriate activity taking
 16 place and inappropriate actions taking place.
 17 I mean, this is done and that day, as I
 18 understand it and I can say with certainty was
 19 carried out in good faith, where I, as the
 20 Minister, attempted to receive information,
 21 some of which I did on the 19th, looking
 22 forward to a full briefing with medical
 23 professionals just two days later with the
 24 help of a briefing note in between. I mean,
 25 this is, you know, quite normal in how

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1 governments and departments respond to issues,
 2 and the information that I had, I gleaned from
 3 Mr. Tilley on the 19th. Looked forward to a
 4 full and complete briefing on the 21st, that
 5 took place, again, with some information
 6 provided in a briefing note and we moved
 7 forward from there. And there's really no
 8 more to it than that, and yes, there are e-
 9 mails that are being shared between officials
 10 in my office and central agencies of
 11 government, and I'm pleased that they're
 12 there, I mean because it shows an immediate
 13 attention to this issue and it shows that as a
 14 department, there was a response to ensure
 15 that information was circulated. My meeting
 16 on the 19th was preliminary; a full and
 17 complete briefing took place on the 21st and
 18 Mr. Coffey, it's really, you know, as I see
 19 it, that whole process is not complicated and
 20 it was done in good faith to try to work
 21 through a series of events that clearly was
 22 sensitive. I referred to it and I think in my
 23 own wording last week as a critical public
 24 health issue and we moved forward in the best
 25 way, keeping in mind and upper most in my mind

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1 at all times the issues of patient safety and
 2 minimizing risk to our patients. And that was
 3 fundamentally important to me and I sought the
 4 advice on that point. I received information
 5 on that point and, Mr. Coffey, moved forward
 6 with the benefit of that information.
 7 COFFEY, Q.C.:
 8 Q. Now, if on the 19th you did receive that
 9 information that is referred to in Gary Cake's
 10 initial e-mail of that day that we have here,
 11 certainly on that day, based upon what you've
 12 told us, you were in no position to make any
 13 comment upon patient safety? On the 19th,
 14 based upon what you've told us?
 15 MR. OTTENHEIMER:
 16 A. Well, I disagree on that point.
 17 COFFEY, Q.C.:
 18 Q. Okay, what had you learned on the 19th then
 19 that led you to believe -
 20 MR. OTTENHEIMER:
 21 A. Well I remember being advised on the fact that
 22 certain years individuals were being retested.
 23 I was introduced for the first time of the new
 24 Ventana system that was in place and -
 25 COFFEY, Q.C.:

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1 Q. That was on the 19th now.
 2 MR. OTTENHEIMER:
 3 A. As I recall, as I recall. Of course, there is
 4 a more complete discussion on a variety of
 5 issues on the 21st, but I was certainly
 6 beginning to understand, even from the meeting
 7 on the 19th that steps were beginning and had
 8 begun to take place which addressed the issue
 9 of my main concern of patient safety. As time
 10 went on, of course, in due course I was given
 11 a greater assurance that patient safety issues
 12 were being addressed and that, for me,
 13 fundamentally was the issue of the full
 14 realization that all testing was taking place
 15 at Mount Sinai Hospital in Toronto and--and I
 16 want to repeat this because this, for me, was
 17 perhaps the most important point on the issue
 18 of patient safety and that is, Mr. Coffey,
 19 that our lab, our provincial lab was shut
 20 down. There were not further tests taking
 21 place and that happened several weeks after my
 22 original meetings on both the 19th and the
 23 21st.
 24 COFFEY, Q.C.:
 25 Q. Yes, exactly, it happened weeks later, Mr.

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1 Ottenheimer.
 2 MR. OTTENHEIMER:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. So I'm asking you back at the time you first
 6 found out, on July 19th, what were you told,
 7 if anything -
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. - that would have alleviated any concerns you
 12 had about patient safety in that lab, for the
 13 people who were to be tested on the 19th, for
 14 the people who were to be tested on the 20th?
 15 MR. OTTENHEIMER:
 16 A. The points that I recall and I'll repeat them,
 17 I was introduced to the issue for the first
 18 time and the fact that a new testing system
 19 had been put in place; namely the Ventana
 20 system. And as I recall and as I say, I have
 21 no notes reflecting what took place on the
 22 19th. When I left the department a number of
 23 months later, I took no notes with me. The
 24 information I have here is what has been
 25 shared with everybody, but as I recall on the

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1 19th, there was some discussion of the fact
 2 that for a number of years retesting was
 3 taking place. I further remember specifically
 4 Eastern Health officials indicating to me they
 5 were not really sure what the situation was.
 6 It was complex -
 7 COFFEY, Q.C.:
 8 Q. But on the 19th the only one you're talking to
 9 is George Tilley?
 10 MR. OTTENHEIMER:
 11 A. Pardon me?
 12 COFFEY, Q.C.:
 13 Q. On the 19th, the only one you're talking to is
 14 George Tilley?
 15 MR. OTTENHEIMER:
 16 A. As I recall yes, on the 19th.
 17 COFFEY, Q.C.:
 18 Q. So what was it that George was telling you,
 19 George Tilley?
 20 MR. OTTENHEIMER:
 21 A. These are some of the points that I remember,
 22 that I just shared with you. I can be,
 23 perhaps just a little bit more complete, I
 24 guess, because I have the benefit of the notes
 25 that took place on the 21st, but

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1 unfortunately, I have no notation as to
 2 exactly what was shared with me on the 19th,
 3 but I was aware of the fact that there would--
 4 and had requested, Mr. Coffey, a full briefing
 5 with the benefit of medical professional
 6 presence and that took place approximately 48
 7 hours later.
 8 COFFEY, Q.C.:
 9 Q. Sir, you've told us that one of the concerns
 10 you had in particular in this whole scenario,
 11 as the summer unfolded, the summer of '05
 12 unfolded, was that individual patients be
 13 notified about the fact that their tissue
 14 samples were being retested. Do you recall--
 15 you told us that last Monday.
 16 MR. OTTENHEIMER:
 17 A. Well I think it's there--I think we used as
 18 some evidence to support that -
 19 COFFEY, Q.C.:
 20 Q. I'm not--no one is taking any issue with that,
 21 that was a concern of yours. I'm not taking
 22 any issue -
 23 MR. OTTENHEIMER:
 24 A. That there be public notice.
 25 COFFEY, Q.C.:

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1 Q. That your particular concern, you told us, not
 2 so much about the public, although that would
 3 follow -
 4 MR. OTTENHEIMER:
 5 A. Right.
 6 COFFEY, Q.C.:
 7 Q. But the individual patients be told.
 8 MR. OTTENHEIMER:
 9 A. That was important to me.
 10 COFFEY, Q.C.:
 11 Q. Yes, it was, wasn't it.
 12 MR. OTTENHEIMER:
 13 A Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. Now if I could, when this first came to your
 16 attention, this whole matter, did you express
 17 that concern to those around you?
 18 MR. OTTENHEIMER:
 19 A. I feel safe in saying that I did, yes.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. OTTENHEIMER:
 23 A. But I can't recall specifically the exact
 24 language that I used.
 25 COFFEY, Q.C.:

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1 Q. Just one moment, please, Commissioner, I'll
 2 just locate something. I apologize,
 3 Commissioner, I'm looking for--just a moment,
 4 please, Commissioner. I'll have to come back
 5 to the point, but the point is this, this is
 6 an e-mail within Eastern Health and I will
 7 refer to it later, we'll come back to it,
 8 which indicates that in fact the department
 9 knew on the 18th and the department had given
 10 direction concerning a letter on the 18th of
 11 July, so I'm going to be returning to that,
 12 just to let you know.

13 REGISTRAR:
 14 Q. Mr. Coffey, is that the media release, July
 15 18th, 2005?

16 COFFEY, Q.C.:
 17 Q. No, it's not the actual media release itself,
 18 I appreciate the thought, but it's in this
 19 grouping. Just a moment, please Commissioner,
 20 while it's on my mind now, I'll address it.
 21 Oh yes, exhibit P-0300. Now I appreciate that
 22 you are not the recipient or the originator of
 23 any of these, but your department is referred
 24 to. And this is an e-mail from Heather
 25 Predham, Monday, July 18th, 2005 at 12:29

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1 p.m., which is the day before you had lunch
 2 with--a full 24 hours before you had lunch
 3 with Mr. Tilley. And it's to Dr. Robert
 4 Williams, carboned to Denise Dunn, Dr. Donald
 5 Cook, Terry Gulliver. The subject is "ER/PR
 6 receptor letter". And it says, "Hi Dr.
 7 Williams, I heard back from Dr. Cook and Terry
 8 Gulliver re: the letter and the changes to be
 9 made. Both agree that it should come from
 10 you. I was speaking to Deborah Thomas today
 11 and the Department of Health has been notified
 12 and is now involved. They would like a letter
 13 sent to each woman outlining the problem and
 14 the steps we are taking to address it. That
 15 draft letter will be seen by our lawyer first,
 16 of course. I guess we'll have to decide
 17 tomorrow or the next day re: advising the
 18 public?" Signed Heather. And there is
 19 appended to it, apparently, an update on
 20 ER/PR.doc and I don't have that here. So, Mr.
 21 Ottenheimer, that seems to suggest and just to
 22 let you know Deborah Thomas, I understand, was
 23 working with Eastern Health in their
 24 Communications Department at the time, that
 25 your department, as early as the middle of

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1 July 18th, 2005, midday, had been notified--
 2 was involved and wanted a letter sent to each
 3 woman outlining the problem and the steps that
 4 were being taken to address it. Does that
 5 help in any way refresh your memory of the
 6 events of early that week, Monday and Tuesday?

7 MR. OTTENHEIMER:
 8 A. It doesn't. I mean, it's clear, according to
 9 this piece of correspondence that there was
 10 some discussion with some officials in the
 11 department. My first introduction to this
 12 issue, as I mentioned in the past and
 13 reiterated this morning is the 19th, but I
 14 mean, this is clear that there was some
 15 discussion with individuals in the department
 16 the day before.

17 COFFEY, Q.C.:
 18 Q. Well not only discussion, but apparently
 19 direction given.

20 OTTENHEIMER:
 21 A. Well certainly some discussion on a very
 22 sensitive issue.

23 COFFEY, Q.C.:
 24 Q. "They would like a letter sent to each woman
 25 outlining the problem and the steps we are

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1 taking to address it." That is an actual
 2 direction, isn't it?

3 MR. OTTENHEIMER:
 4 A. Well it's a clear indication of an approach
 5 that ought to be taken, there's no doubt about
 6 that--on the 18th.

7 COFFEY, Q.C.:
 8 Q. And it was an approach consistent with the one
 9 that you, yourself -

10 MR. OTTENHEIMER:
 11 A. That is correct.

12 COFFEY, Q.C.:
 13 Q. - felt appropriate.

14 MR. OTTENHEIMER:
 15 A. I would share, I mean if I were asked that
 16 question on the 19th in my first introduction
 17 on this issue or on the 21st, the first formal
 18 briefing, that seems to me to be consistent
 19 with my own thinking at that time, that is
 20 correct.

21 COFFEY, Q.C.:
 22 Q. Now if I could, please, look at perhaps
 23 exhibit P-0136, please. Now these are typed
 24 versions of your executive assistant's,
 25 Darrell Hynes' notes of the meeting of July

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1 21, 2005. Now, sir, what do you recall--
 2 because you had time now to think about it, a
 3 week, certainly to think carefully about it,
 4 what do you recall about the meeting on the
 5 21st?
 6 MR. OTTENHEIMER:
 7 A. I'm aided, of course, by the benefit of these
 8 notes because, again, these are the only
 9 notes--in addition to the notes of Carolyn
 10 Chaplin, so I guess the points that are raised
 11 there, when you--as we can all appreciate, I
 12 think, when you look at a note three years
 13 later and you tend to recollect exactly what
 14 was said at a meeting three years later, in
 15 the absence of your own notes, I mean, it gets
 16 often, it blends and it's difficult to recall
 17 specifically, so my answer, I guess to that
 18 question, Mr. Coffey, would have to rely on
 19 the note that is there in front of me. I'd
 20 have to rely on that and rely on similar notes
 21 by Carolyn Chaplin on the same day.
 22 COFFEY, Q.C.:
 23 Q. If we could turn to--just a moment please, P-
 24 0124 please? And these are the briefing
 25 notes, just a moment, please Commissioner, I

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1 apologize. The July 20th briefing note,
 2 actually. This is all the government's--yes,
 3 it's one of the earlier ones. Ah, Exhibit P-
 4 0075. Mr. Ottenheimer, we looked at this the
 5 last day. There's something about this, when
 6 one looks through it and there are a lot of
 7 dates and listing of dates on the first two
 8 pages and do you see--and take your time,
 9 there's three pages, do you see any reference
 10 in this to the total number of patients that
 11 might be affected?
 12 THE COMMISSIONER:
 13 Q. Mr. Ottenheimer, do you have a hard copy of
 14 that, because if you don't, there's a mouse in
 15 front of you which will enable you -
 16 MR. OTTENHEIMER:
 17 A. No, no, I have a copy here.
 18 THE COMMISSIONER:
 19 Q. All right.
 20 COFFEY, Q.C.:
 21 Q. Total number of patients that might possibly
 22 be affected.
 23 MR. OTTENHEIMER:
 24 A. I'm assuming because there's three pages here,
 25 that your question suggests that there is no

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1 reference to total numbers there.
 2 COFFEY, Q.C.:
 3 Q. I'm just asking.
 4 MR. OTTENHEIMER:
 5 A. Yeah, but I'm assuming that's why you asked
 6 the question.
 7 COFFEY, Q.C.:
 8 Q. I just want to be -
 9 MR. OTTENHEIMER:
 10 A. Because I can't immediately respond to that.
 11 COFFEY, Q.C.:
 12 Q. Sure, you take your time, that's what I'm
 13 saying take your time on this because this is
 14 the first detailed briefing, as you said -
 15 MR. OTTENHEIMER:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. - that you were having on this. This is the
 19 only piece of paper you apparently were given
 20 that day.
 21 MR. OTTENHEIMER:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. And you describe as a full briefing. Now the
 25 piece of paper, itself, the written briefing

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1 contains no reference, does it, to the total
 2 number of patients? Not even a ballpark
 3 guess.
 4 MR. OTTENHEIMER:
 5 A. In terms of total numbers? Is there a
 6 reference here to the number of tests that are
 7 carried out on an annual basis, is that in
 8 this note?
 9 THE COMMISSIONER:
 10 Q. I think there was a number in Mr. Hynes' note
 11 which was the last exhibit we looked at.
 12 COFFEY, Q.C.:
 13 Q. And I appreciate Mr. Hynes--and I understand
 14 that, Commissioner, I appreciate that
 15 verbally, well we know that verbally on the
 16 morning of the 19th, the numbers of 1200 and
 17 1500 were apparently available within your
 18 department.
 19 MR. OTTENHEIMER:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. So I'm asking you, two days later when you had
 23 your formal briefing with these professionals
 24 -
 25 MR. OTTENHEIMER:

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1 A. Right.
 2 COFFEY, Q.C.:
 3 Q. And the CEO of Eastern Health in the written
 4 document you were given, is there any
 5 reference to the total number of patients?
 6 MR. OTTENHEIMER:
 7 A. It may not be in the written document, but it
 8 may well have been discussed at the meeting.
 9 COFFEY, Q.C.:
 10 Q. Oh yes.
 11 MR. OTTENHEIMER:
 12 A. So, you know, it may have been part and parcel
 13 of information that was discussed and shared
 14 at that time.
 15 COFFEY, Q.C.:
 16 Q. And so I take it that your understanding would
 17 be, what you're saying is Mr. Coffey, okay,
 18 fine, it's not in writing but I certainly, and
 19 the notes of Mr. Hynes' for example, reflect
 20 that there were numbers being talked about.
 21 MR. OTTENHEIMER:
 22 A. There is some reference to numbers, that's
 23 correct, yes.
 24 COFFEY, Q.C.:
 25 Q. So what you're told verbally matters too?

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1 MR. OTTENHEIMER:
 2 A. I would think so, yes, that's the purpose of a
 3 briefing. A briefing note is there to assist
 4 in the discussion. For example, when--just to
 5 give as an example if doctors were present,
 6 there may be no reference to a particular
 7 physician in a briefing note, but that
 8 physician's opinion and point of view at a
 9 particular meeting would obviously be of some
 10 importance. So it seems to me they have to be
 11 viewed, Mr. Coffey, in their totality what you
 12 have before you in writing and what may be
 13 added to that by way of discussion at a
 14 meeting that discusses an issue somewhat
 15 substantively.
 16 COFFEY, Q.C.:
 17 Q. Exhibit P-0073, please? Now, sir, if I could,
 18 this is an e-mail from--at the bottom on it,
 19 from Heather Predham, July 19th, 2005, 8:22
 20 a.m. to Dr. Robert Williams, Dr. Donald Cook,
 21 Terry Gulliver, Susan Bonnell and Deborah
 22 Thomas, carboned to others. Information from
 23 HIROC and she begins by saying, "I had a long
 24 conversation with the representatives from
 25 HIROC yesterday evening." It goes on to say,

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1 well it goes on to talk about the background--
 2 well, I'll read it through because I'm going
 3 to ask you a question about July 31st. "As a
 4 bit of background, they are currently
 5 defending a class action lawsuit against
 6 Health Labrador re: the reprocessing of
 7 equipment. Apparently the aspect of this
 8 lawsuit on which they are most vulnerable was
 9 the method the people were informed. Ches
 10 Crosbie has alleged in the lawsuit that the
 11 people suffered significant mental anguish from
 12 the way they were told and the risk of disease
 13 from their exposure did not warrant the stress
 14 and anxiety they suffered by being told.
 15 The organization felt the need to
 16 disclose publicly, ran it by their legal
 17 counsel and then wrote letters to every person
 18 affected and sent out a news release (sound
 19 familiar???). Their vulnerability comes from
 20 the lack of weighing out the risk from the
 21 exposure verses the anxiety of being told
 22 about it. In this case, the risk from the
 23 exposure was very small. This leads to our
 24 situation, it's not that they don't want us to
 25 disclose, they just don't want us to disclose

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1 until we are sure of our facts. I've had a
 2 quick voice mail from Dan, after my chat with
 3 HIROC, they contacted him after they hung up
 4 from me, reiterating this and that they will
 5 be in touch again in the morning. So I guess
 6 we will have to re-evaluate where we are
 7 before we plan to send those letters, et
 8 cetera. Should we chat about this face to
 9 face?" Signed Heather. Now, the subject
 10 matter of the lawsuit in Labrador, Class
 11 Action, sending of letters, the lawsuit in
 12 Labrador related to the sending of letters to
 13 patients, did that come up during a meeting of
 14 July 21st?
 15 MR. OTTENHEIMER:
 16 A. There was--I recollect and I believe I
 17 mentioned this last week, discussion on legal
 18 liability issues. That may or may not have
 19 come up, I cannot recall specifically, but I
 20 wish to make the point that I made last week
 21 and that is as an individual, any decision
 22 that is made taking into account liability
 23 issues or legal issues, would have played no
 24 role, Mr. Coffey, in my decision to support
 25 the view of the medical professionals. And

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1 that is important for me to state and to state
 2 once again. It's an issue that, to me, was
 3 not relevant to the fundamental issue of
 4 disclosure and when we ought to disclose and I
 5 shared that point of view both--at any
 6 opportunity that I had which is evidenced by
 7 independent, either briefing notes or e-mails.
 8 So it's important for me to say that because
 9 that is clearly how I felt at the time. I
 10 expressed that view exactly one week ago when
 11 I was questioned, Mr. Coffey, and it's
 12 important for me to state that once again.
 13 COFFEY, Q.C.:
 14 Q. Now sir, on July 21st, that Thursday during
 15 that first formal briefing, as you put it.
 16 MR. OTTENHEIMER:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Do you see any reference to oncologist,
 20 pathologists, any type of a physician telling
 21 you that they did not want this, the patients
 22 to be notified at this point because they were
 23 concerned about the patient's welfare. Is
 24 there anything written down here?
 25 MR. OTTENHEIMER:

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1 A. It may not be in the actual note that is here,
 2 but it was clearly something that was
 3 discussed.
 4 COFFEY, Q.C.:
 5 Q. Okay, now who was it discussed by?
 6 MR. OTTENHEIMER:
 7 A. This is a room full of people, Mr. Coffey, I
 8 mean, for example, we have the notes there
 9 from Mr. Tilley--no, that's dated on the 20th
 10 of July. There's a room full of people, Mr.
 11 Tilley is there, Dr. Williams, Dr. Cook and -
 12 COFFEY, Q.C.:
 13 Q. And Dr. Cook is a pathologist, okay?
 14 MR. OTTENHEIMER:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. So are you suggesting what Dr. Cook was saying
 18 not to go and tell the patients because he was
 19 concerned about the way they would react.
 20 MR. OTTENHEIMER:
 21 A. No, it's I cannot recall exactly who may have
 22 said what, but I'm just giving some indication
 23 of who was there and some indication of the
 24 types of things that were discussed at that
 25 meeting.

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1 COFFEY, Q.C.:
 2 Q. And if we could--just one moment please,
 3 Commissioner.
 4 MR. OTTENHEIMER:
 5 A. Which, by the way, is reinforced in subsequent
 6 meetings, in particular the one of August 15th
 7 from the notes of Dr. Williams himself.
 8 COFFEY, Q.C.:
 9 Q. Yes, and I'll get to August 15th, but right
 10 now, if I could turn please to Exhibit P-0304.
 11 Now, sir, this is a memo on Eastern Health
 12 letterhead, it's dated July 21, 2005, it's Re:
 13 ER and PR testing, public disclosure. It's to
 14 George Tilley from Susan Bonnell. Now Mr.
 15 Tilley had been at that meeting on July 21, do
 16 you recall if his Director of Communications
 17 was there? Yours was.
 18 MR. OTTENHEIMER:
 19 A. The name Susan Bonnell?
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 MR. OTTENHEIMER:
 23 A. Yes, her name was on the side, uh-hm.
 24 COFFEY, Q.C.:
 25 Q. So she opens with, in her memo to Mr. Tilley,

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1 "I certainly have some concerns following the
 2 meeting this morning re: public disclosure."
 3 And she goes on at some considerable length
 4 about them, but under the fourth bullet, she
 5 says "We need to consider what implications a
 6 public announcement will have on a variety of
 7 impacted stakeholders." And she goes on at
 8 length, and the third last sub bullet is "What
 9 impact is this going to have on oncologists
 10 and what support will they need to ensure that
 11 patient issues are dealt with promptly. Are
 12 they going to be willing or able to make this
 13 a priority when they may have patients that
 14 are more acutely ill and deserving of priority
 15 care." And suggesting, I'm going to suggest
 16 to you, Mr. Ottenheimer, that at that point in
 17 time in the meeting that morning, that wasn't
 18 discussed because it wasn't known. The
 19 oncologists were going to be met with the
 20 following Monday, on the 25th and Mr. Hynes'
 21 note points that out. So on Thursday morning
 22 it wasn't known what the situation was with
 23 the oncologists or at least it wasn't
 24 discussed at that meeting.
 25 MR. OTTENHEIMER:

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1 A. We do know that we have the presence of a
 2 pathologist and we have now, which this note I
 3 had seen for the first time, the issue is
 4 being raised on the impact that this topic
 5 would have on oncologists with Eastern Health.
 6 COFFEY, Q.C.:
 7 Q. If we could go to page 3 and 4 of this
 8 exhibit, this again is a memo, Eastern Health
 9 letterhead, it's Re: ER and PR Testing, Public
 10 Disclosure. It's dated July 22nd, 2005, it's
 11 to George Tilley, carboned or copied to Dr.
 12 Bob Williams. It's from Susan Bonnell and she
 13 begins, "From a communication's perspective,
 14 there are two separate yet connected issues
 15 emerging: our obligation to ensure that all
 16 breast cancer patients receive the best
 17 possible care and our desire to ensure that
 18 our laboratories function at the highest
 19 possible level." And it goes on at some
 20 length, but on the second page of this memo,
 21 which is page 4 of the exhibit, Commissioner,
 22 the second paragraph says, Mr. Ottenheimer,
 23 "It is important, however, that we not allow
 24 any potential issues with the laboratory and
 25 the manner in which we disclose to the public

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1 to cause any further damage to these
 2 particular breast cancer patients. Although
 3 this particular test has led us to this
 4 potentially critical discovery about the lab,
 5 we must ensure that these patients are not
 6 caught up in something else that causes them
 7 unnecessary stress: a) it is critical that we
 8 consult with the oncologists to get their
 9 expert advice on how to inform the impacted
 10 individuals that their specimens can be
 11 retested." And she goes on about how in
 12 clinical matters the administration defers to
 13 physician decisions on patient care, but that
 14 suggests, Mr. Ottenheimer, that as of the 21st
 15 of July, when you met, that the oncologists
 16 had not yet been consulted.
 17 MR. OTTENHEIMER:
 18 A. This is a memo from Eastern Health to Eastern
 19 Health.
 20 COFFEY, Q.C.:
 21 Q. And they are the ones who are briefing you.
 22 MR. OTTENHEIMER:
 23 A. They are the ones that are briefing me and I
 24 formulated an opinion at the meeting of July
 25 21st, in the presence of a number of

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1 physicians, some of whom are specialists and I
 2 formulated an opinion that allowed me to
 3 support their view. Now whether there were--
 4 oncologists had been--this issue had been
 5 discussed with previously with their
 6 oncologist, some other oncologist or again at
 7 a later date, they are going to be asked that,
 8 Mr. Coffey. I don't know, I don't know the
 9 answer to that. However, there was, at a
 10 variety of meetings that I had had -
 11 COFFEY, Q.C.:
 12 Q. But I'm asking about July 21st, Mr.
 13 Ottenheimer, that's the one okay, right now.
 14 MR. OTTENHEIMER:
 15 A. Uh-hm.
 16 COFFEY, Q.C.:
 17 Q. At that time, on that day, is there anything
 18 in the written materials or anyone's notes
 19 that you see in relation to that meeting,
 20 speaking about oncologist's advice and what it
 21 was?
 22 MR. OTTENHEIMER:
 23 A. There is reference here to a number of
 24 physicians.
 25 COFFEY, Q.C.:

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1 Q. Right, none of them is an oncologist.
 2 MR. OTTENHEIMER:
 3 A. Well on one of my notes and we had this
 4 discussion last week and again, that has to be
 5 clarified and I'm sure you will clarify that
 6 as this process continues. There is reference
 7 to Dr. McCarthy and Dr. Laing.
 8 COFFEY, Q.C.:
 9 Q. But they weren't in the room that day, were
 10 they?
 11 MR. OTTENHEIMER:
 12 A. I do not recall, I know I met with Dr. Laing
 13 on a couple of occasions and I think Dr.
 14 McCarthy on another occasion, but I am not
 15 sure. I do not recall specifically what
 16 meeting; however, there was sufficient
 17 information that was shared with me, Mr.
 18 Coffey, that led me to believe, number one,
 19 that we should go public, but secondly, I
 20 exceeded to the professional view of those
 21 that were around me, particularly on the 21st
 22 of July and again on the 15th of August and
 23 fortunately it is evidenced, Mr. Coffey, in
 24 writing because, as I say, my own note--I do
 25 not have any notes on those points, but there

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1 is some reference to the August 15th meeting
 2 in the note by Dr. Williams and my initial
 3 meeting on the 19th in the note by George
 4 Tilley to the Chair of the Board, Ms. Joan
 5 Dawe.
 6 COFFEY, Q.C.:
 7 Q. Now, Mr. Ottenheimer, on the 21st of July, in
 8 the written materials there is no reference--
 9 and if you can find it, you can point it out
 10 to me and the Commissioner, is there any
 11 reference there to retesting at Mount Sinai
 12 for ongoing matters?
 13 MR. OTTENHEIMER:
 14 A. On the 21st.
 15 COFFEY, Q.C.:
 16 Q. In fact, retesting at Mount Sinai really for
 17 any of these large volume, going back to '97?
 18 Because on the 21st, July 21st, you're
 19 concerned about patient safety and I'm going
 20 to suggest to you, as best you knew that
 21 morning all the retesting at that point was
 22 planned for St. John's?
 23 MR. OTTENHEIMER:
 24 A. That's right and I believe I just indicated a
 25 short while ago that it was after that time

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1 when the decision was made with respect to
 2 Mount Sinai; however, the decision was made
 3 that re: all, retesting would take place and
 4 it was after that fact that you say that it
 5 was to be forwarded to Mount Sinai in Toronto.
 6 COFFEY, Q.C.:
 7 Q. What, if anything, was said to you on July
 8 21st or before that, that gave you any
 9 assurance respecting patient safety on July
 10 21st, July 22nd and July 23rd?
 11 MR. OTTENHEIMER:
 12 A. I guess the fact, Mr. Coffey, that a problem
 13 had been detected. It was shared with me for
 14 the first time on the 19th of July, a full
 15 briefing on the 21st and steps were being
 16 taken to ensure that--or at least to give me
 17 some comfort at least that the approaches that
 18 were being taken were the correct ones. And
 19 as I say, I listened to the best possible
 20 professional advice that I could get at that
 21 time and that was the process that unfolded.
 22 I want to say as well, that I requested
 23 frequent briefings, which I did, I was briefed
 24 again on the 5th, again on the 15th and we
 25 know the dates, but as time went on, steps

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1 were being taken that would minimize patient
 2 risk and as I repeated in the past, that was
 3 fundamentally important to me.
 4 COFFEY, Q.C.:
 5 Q. But that's as time went on.
 6 MR. OTTENHEIMER:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. I'm asking you about July 21st. Okay, you're
 10 being told that there's a significant problem
 11 in the lab, has existed for a long period,
 12 involves many, many patients, okay?
 13 MR. OTTENHEIMER:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. What assurance were you given at the time that
 17 that problem didn't exist then and there?
 18 MR. OTTENHEIMER:
 19 A. Well, Eastern Health gave me every assurance
 20 that this whole issue was being investigated,
 21 that they were not fully aware as to the
 22 extent of this problem. The retesting was
 23 taking place. I remember clearly a discussion
 24 that certain years were of concern and again,
 25 it was only a matter and a short period of

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1 that, and our lab was shut down. So there's a
 2 sequence of events here that were, you know,
 3 obviously important to me. There's another
 4 note that I came across, just recently, that
 5 indicated I think on the 24th of 25th of July,
 6 Mr. Coffey, I wanted an update as to the
 7 status of the ER/PR issue. So it was
 8 important to me, I requested the updates, I
 9 requested the briefings. I received the
 10 briefings and as time went on, steps were
 11 taken that gave me the assurance that patient
 12 safety was being addressed, and again that
 13 risk to our patients was being minimized.
 14 COFFEY, Q.C.:
 15 Q. So on the 21st, was there anything in
 16 particular that day?
 17 MR. OTTENHEIMER:
 18 A. Again I have the benefit of the note here that
 19 we have the introduction of the Ventana system
 20 and I was fully aware of the fact that
 21 retesting was taking place.
 22 COFFEY, Q.C.:
 23 Q. Presumably using the Ventana system, did you
 24 understand that?
 25 MR. OTTENHEIMER:

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1 A. That was my understanding, yes.
 2 COFFEY, Q.C.:
 3 Q. Okay, and so were you given to understand that
 4 the Ventana system wouldn't make--the same
 5 errors wouldn't occur using the Ventana
 6 system, is that the -
 7 MR. OTTENHEIMER:
 8 A. There was some suggestion, as I recall, that
 9 the Ventana system was much more sensitive and
 10 it was--that may or may not have been a
 11 contributing factor. It seems to me, as I
 12 recall and this is just an impression perhaps
 13 more than anything, Mr. Coffey, but it seems
 14 to me, as I recall, that still within the
 15 minds of Eastern Health officials that may
 16 have been a factor in some of the results
 17 changing, but as I say, that's more of an
 18 impression.
 19 COFFEY, Q.C.:
 20 Q. Now, sir, you've indicated to us that
 21 throughout that--well in fact, throughout any
 22 time, that you had never spoken to the Premier
 23 about it, you had never spoken to anybody from
 24 his office about it. I take it you never
 25 spoke to anybody from Cabinet Secretariat

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1 about it, ER/PR?
 2 MR. OTTENHEIMER:
 3 A. That is correct.
 4 COFFEY, Q.C.:
 5 Q. You've certainly before May of 2007 had never
 6 spoken to another minister about it, would
 7 that be correct?
 8 MR. OTTENHEIMER:
 9 A. Uh-hm, that is correct. It became a public
 10 issue, as we all know on the 2nd of October,
 11 2005 and that is correct.
 12 COFFEY, Q.C.:
 13 Q. Is there any reason why you never did?
 14 MR. OTTENHEIMER:
 15 A. Well, for me, this situation was always
 16 regarded by me as operational. I felt
 17 satisfied that I had sufficient information to
 18 allow me to formulate some opinion on the
 19 issue of patient safety and on the issue of
 20 minimizing risk to our patients. Once it
 21 became a public issue, patients were then free
 22 to discuss -
 23 COFFEY, Q.C.:
 24 Q. I appreciate that, but does that have anything
 25 to do with you not talking to the Premier or

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1 anybody else about it.
 2 MR. OTTENHEIMER:
 3 A. But it puts it in--I guess it puts it in
 4 context, Mr. Coffey, as to why that particular
 5 discussion did not take place.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 MR. OTTENHEIMER:
 9 A. It was an operational issue. It was being
 10 managed operationally on a day-to-day basis by
 11 the professionals and the administrative
 12 staff, whom I have great respect for. This
 13 was being done on a day-to-day basis and that
 14 gave me the comfort and knowing once the issue
 15 unfolded and once individual patients had the
 16 opportunity to discuss her or his own medical
 17 set of circumstances with their physician and
 18 with their specialists, that gave me the
 19 comfort. Again, operationally it was being
 20 managed on a day-to-day basis and it didn't
 21 seem to me to be an issue that I would raise
 22 with the Premier at that time.
 23 COFFEY, Q.C.:
 24 Q. Okay, so it doesn't go public for two and a
 25 half months.

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1 MR. OTTENHEIMER:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. You are--to use the phrase "walking on egg
 5 shells" about it, you're so relieved on the
 6 2nd that it does go public.
 7 MR. OTTENHEIMER:
 8 A. I was quite relieved, no question.
 9 COFFEY, Q.C.:
 10 Q. So you never choose to speak to the Premier or
 11 any of the staff about it, about the fact that
 12 this could come out into the open at any
 13 moment?
 14 MR. OTTENHEIMER:
 15 A. I, as I say, I was aware of the fact that
 16 there was correspondence and we had that
 17 earlier discussion this morning, but no, I
 18 mean, I don't deny that for a moment. I mean,
 19 I never discussed this issue with the Premier
 20 and it was an issue that I felt operationally
 21 was being managed on a day-to-day basis by
 22 those who knew the situation best from a
 23 medical point of view and a professional point
 24 of view, and that was my belief.
 25 COFFEY, Q.C.:

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1 Q. What was the--you just said something about an
 2 exchange of documents, what correspondence are
 3 you aware of between your department and the
 4 Cabinet or the Premier's officer.
 5 MR. OTTENHEIMER:
 6 A. Well I've never seen those e-mails, but as I
 7 said in testimony last week, there was some
 8 contact made.
 9 COFFEY, Q.C.:
 10 Q. Oh yes, and so you realize Carolyn had been
 11 talking to the -
 12 MR. OTTENHEIMER:
 13 A. There was some contact, that's correct,
 14 whatever that was.
 15 COFFEY, Q.C.:
 16 Q. Now the stand down, 237 e-mail, I'll refer to
 17 it as the stand down, "no action required at
 18 this time" e-mail. Did anybody ever tell you
 19 about that, about not only the e-mail, but
 20 what's in it, the contents of it.
 21 MR. OTTENHEIMER:
 22 A. I don't recall specifically, as I say, I
 23 didn't see that e-mail and I don't recall
 24 specifically the details as they were shared
 25 in that e-mail. There may have been some

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1 general discussion, but Mr. Coffey, I cannot
 2 be specific.
 3 COFFEY, Q.C.:
 4 Q. So from your perspective, looking back on it,
 5 it's entirely possible that your Deputy
 6 Minister would tell your Director of
 7 Communications to advise the Cabinet
 8 Secretariat that this is not going to be
 9 public, go public now and that there's going
 10 to be--any announcement when it comes may be
 11 minimized, the significance may be minimized,
 12 that that could happen without you being told
 13 before the e-mail was sent or even afterwards?
 14 MR. OTTENHEIMER:
 15 A. The actual detail, the actual specifics I
 16 cannot speak to, that is possible, but I
 17 cannot say for sure. I cannot say for sure.
 18 THE COMMISSIONER:
 19 Q. Mr. Coffey, we're already past the time for
 20 the morning break, if it's convenient now.
 21 COFFEY, Q.C.:
 22 Q. Should you have been told?
 23 MR. OTTENHEIMER:
 24 A. You know, hindsight I guess is a wonderful
 25 thing and we hear that particular cliché

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1 perhaps all too often, but it's, you know,
 2 sometimes a decision that is made at a
 3 particular time and you know, one would think
 4 that I would be fully aware of the specifics
 5 and the details of an e-mail such as that;
 6 however, again in fairness to those other
 7 individuals, I cannot be absolutely certain.
 8 COFFEY, Q.C.:
 9 Q. So you may have been, is that what you're
 10 saying, you -
 11 MR. OTTENHEIMER:
 12 A. I'm saying there may have been some general
 13 discussion, I just said that earlier, but
 14 there may have been some general discussion of
 15 information, but I cannot be specific on that.
 16 COFFEY, Q.C.:
 17 Q. So what Carolyn says to Gary Cake, Carolyn
 18 Chaplin says to Gary Cake at 2:37 p.m., you
 19 may very well have been made aware of it and
 20 the basis for it, you just can't recall?
 21 MR. OTTENHEIMER:
 22 A. I cannot recall and as I say, in fairness,
 23 these are people whom I respect, these are
 24 people that I had a good working relationship
 25 with and I do not want to say with absolute

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1 certainty one way or the other. I simply
 2 don't recall.
 3 COFFEY, Q.C.:
 4 Q. And if you were told, you've forgotten, not
 5 only that you were told, but what you were
 6 told?
 7 MR. OTTENHEIMER:
 8 A. I simply don't recall, Mr. Coffey.
 9 COFFEY, Q.C.:
 10 Q. Which means you've forgotten, effectively, if
 11 you don't recall -
 12 MR. OTTENHEIMER:
 13 A. I don't recall.
 14 COFFEY, Q.C.:
 15 Q. You either were told and can't remember it
 16 now, so you've forgotten it or you were not
 17 told?
 18 MR. OTTENHEIMER:
 19 A. I don't recall.
 20 COFFEY, Q.C.:
 21 Q. And you don't know which of those two is
 22 correct?
 23 MR. OTTENHEIMER:
 24 A. As I say, I cannot be specific on that.
 25 COFFEY, Q.C.:

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1 Q. Thank you, Commissioner.
 2 THE COMMISSIONER:
 3 Q. We'll take fifteen minutes.
 4 (RECESS)
 5 THE COMMISSIONER:
 6 Q. Please be seated. Mr. Coffey?
 7 COFFEY, Q.C.:
 8 Q. Thank you, exhibit P-0312 please? We looked
 9 at this earlier, Mr. Ottenheimer, one of them
 10 is--page one is the e-mail of 10:32 a.m. that
 11 morning and page five is the 2:37 p.m. e-mail,
 12 the first one 10:32 I'll refer to it as the
 13 alerting or heads up e-mail; and the 2:37 p.m.
 14 one as the no action required or stand down e-
 15 mail. Other than your lunch with Mr. Tilley
 16 that day, do you know of anything else that,
 17 you know, any idea of why that 2:37 p.m. e-
 18 mail was sent? Any possible explanation that
 19 you can provide?
 20 MR. OTTENHEIMER:
 21 A. Other than, and again, Carolyn would be in the
 22 best position to answer that question, other
 23 than the fact that--well, she says that
 24 there's a briefing being arranged for the--
 25 well she says the latter part of the week, so

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1 we know that was on Thursday, the 21st, so it
 2 may be her belief that no action required at
 3 that time in anticipation of a briefing. I
 4 mean, that's just a possible interpretation,
 5 but again, I'm not sure.
 6 COFFEY, Q.C.:
 7 Q. In terms of the Director of Communications,
 8 Carolyn Chaplin on July 19th, 2005, would
 9 certainly not have the authority to stop that
 10 was apparently the plan process of going
 11 public on Thursday, she couldn't do that?
 12 That would have to be Mr. Abbott or yourself?
 13 MR. OTTENHEIMER:
 14 A. I would think that, and again, she would have
 15 to be asked by what's meant by "no action
 16 required" and I have no idea what's meant by
 17 that, Mr. Coffey, in the context of that e-
 18 mail. One possibility is that there was a
 19 briefing that was scheduled for two days
 20 later, and as I say, that would be my only
 21 comment I can make. I do notice as well that
 22 that particular e-mail is copied to Mr.
 23 Abbott, so -
 24 COFFEY, Q.C.:
 25 Q. But in terms of yourself then, you have no

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1 recollection of actually being involved in
 2 this yourself?
 3 MR. OTTENHEIMER:
 4 A. I don't have any specific recollection on that
 5 point. Again, Carolyn Chaplin would be the
 6 best to ask that.
 7 COFFEY, Q.C.:
 8 Q. Well I've spoken to Carolyn Chaplin so I have
 9 some idea of what her memory is, but my
 10 recounting of it doesn't much happen here.
 11 MR. OTTENHEIMER:
 12 A. Okay.
 13 COFFEY, Q.C.:
 14 Q. I'm asking you do you have any?
 15 MR. OTTENHEIMER:
 16 A. I don't recall specifically the reference that
 17 is made in this e-mail. Again -
 18 COFFEY, Q.C.:
 19 Q. How about John Abbott?
 20 MR. OTTENHEIMER:
 21 A. I cannot recall. As I say, I have said
 22 throughout this, Mr. Coffey, that, you know,
 23 there may have been some brief discussion on
 24 this issue, in addition to a variety of many,
 25 many other issues that would occur in the

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1 office of any minister of any large
 2 department, but I cannot be specific on that
 3 point.
 4 COFFEY, Q.C.:
 5 Q. Is it possible that over the lunch hour on
 6 Tuesday, the 19th, that the department,
 7 including yourself, made the decision that you
 8 would instruct Eastern Health not to hold the
 9 briefing now until the department was in fact
 10 briefed?
 11 MR. OTTENHEIMER:
 12 A. I do not recall that, Mr. Coffey.
 13 COFFEY, Q.C.:
 14 Q. Is it possible that that happened?
 15 MR. OTTENHEIMER:
 16 A. I mean, I simply don't recall that, I mean,
 17 you ask if something is possible, I mean, many
 18 things in life are possible, but I don't
 19 recall that.
 20 COFFEY, Q.C.:
 21 Q. And you have no explanation for how this
 22 happened, other than to point us to go talk to
 23 Carolyn and John Abbott? Carolyn Chaplin and
 24 John Abbott.
 25 MR. OTTENHEIMER:

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1 A. And the fact that there was a briefing
 2 scheduled in two days time on the 21st.
 3 COFFEY, Q.C.:
 4 Q. Well what's that -
 5 MR. OTTENHEIMER:
 6 A. That may account for the reference to no
 7 action being required.
 8 COFFEY, Q.C.:
 9 Q. Oh, I appreciate that, but that suggests that
 10 if there's a briefing going to occur on
 11 Thursday and 10:30 that morning Carolyn is
 12 telling the Cabinet Secretariat that as early
 13 as Thursday, there may be an announcement on
 14 this.
 15 MR. OTTENHEIMER:
 16 A. Uh-hm.
 17 COFFEY, Q.C.:
 18 Q. There wouldn't be much point of being briefed
 19 as the announcement is being made, would
 20 there?
 21 MR. OTTENHEIMER:
 22 A. Well I guess the purpose of the briefing would
 23 be, you know, for all parties present to be
 24 introduced to a whole variety of issues,
 25 including that point, I guess.

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1 COFFEY, Q.C.:
 2 Q. Sure. And therefore, the department then, on
 3 Tuesday, would not have wanted this to go
 4 public on Thursday before the department was
 5 in fact informed about the details, which was
 6 to occur on Thursday.
 7 MR. OTTENHEIMER:
 8 A. It was important to me, as Minister, having
 9 been introduced for the first time on this
 10 issue on the 19th to be fully briefed on the
 11 21st.
 12 COFFEY, Q.C.:
 13 Q. And you didn't want Eastern Health making a
 14 public announcement on Thursday without you
 15 having been briefed?
 16 MR. OTTENHEIMER:
 17 A. I can't even say with any accuracy, Mr.
 18 Coffey, if that issue was discussed with me
 19 directly. I cannot say that with absolute
 20 certainty.
 21 COFFEY, Q.C.:
 22 Q. Well how about indirectly, is it likely that
 23 that issue was discussed with you?
 24 MR. OTTENHEIMER:
 25 A. I simply cannot recall because I was looking

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1 forward to the full briefing on the 21st.
 2 COFFEY, Q.C.:
 3 Q. And you wanted the full briefing, I take it,
 4 because you wanted to know what was going on
 5 as best you could.
 6 MR. OTTENHEIMER:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Before Eastern Health was out in the media
 10 talking about this. That's why you'd want the
 11 briefing.
 12 MR. OTTENHEIMER:
 13 A. Well, I mean, that could be somebody else's
 14 interpretation. I simply don't know, I needed
 15 to know more information other than what was
 16 provided to me on the 19th with the benefit of
 17 some medical personnel and I received that on
 18 the 21st.
 19 COFFEY, Q.C.:
 20 Q. Sure, but you didn't want Eastern Health out
 21 making an announcement on the 21st without you
 22 having received that information?
 23 MR. OTTENHEIMER:
 24 A. Well Eastern Health certainly knew the
 25 situation much better than anybody else and it

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1 never--I did not formulate an opinion in my
 2 mind as to what would happen on the 19th or
 3 the 20th. All I know is that I had requested
 4 a full briefing on the 21st, which I received.
 5 COFFEY, Q.C.:
 6 Q. And is it possible that you just didn't want
 7 them going public until you had been briefed?
 8 It's perhaps not an unreasonable thing, but
 9 I'm just saying, is it possible?
 10 MR. OTTENHEIMER:
 11 A. On the contrary, it was certainly my view that
 12 this issue be made public as soon as possible
 13 and that is evidenced in Mr. Tilley's own note
 14 to Ms. Dawe dated July 20th.
 15 COFFEY, Q.C.:
 16 Q. What I'm getting at is why not have them go
 17 public on the 20th? On the 21st, as you're
 18 sitting being briefed, why couldn't it be
 19 going public?
 20 MR. OTTENHEIMER:
 21 A. Well that would be consistent with my view
 22 that I shared with Mr. Tilley as early as the
 23 19th and -
 24 COFFEY, Q.C.:
 25 Q. But did you want them out going public before

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1 you'd been briefed? Was that acceptable?
 2 Would that be acceptable?
 3 MR. OTTENHEIMER:
 4 A. I was of the view that this issue should go
 5 public as soon as possible.
 6 COFFEY, Q.C.:
 7 Q. Before you were briefed?
 8 MR. OTTENHEIMER:
 9 A. Well I had some introduction to the topic on
 10 the 19th. A full briefing would take place on
 11 the 21st.
 12 COFFEY, Q.C.:
 13 Q. Were you prepared to have them hold a press
 14 conference before you were briefed?
 15 MR. OTTENHEIMER:
 16 A. I do not recall specifically discussing that
 17 issue. I do recall expressing the view that
 18 this matter should go public as soon as
 19 possible. I also recall requesting a full
 20 briefing on the 21st which in fact I had.
 21 COFFEY, Q.C.:
 22 Q. At any time that week, the week of July 19th,
 23 were you ever given any reason to think that
 24 the significance of any announcement will be
 25 minimized and how that might come about?

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1 MR. OTTENHEIMER:
 2 A. Only from the point of view that I seem to
 3 have formulated the impression that Eastern
 4 Health did simply not know the extent to which
 5 this was a most serious problem.
 6 COFFEY, Q.C.:
 7 Q. Well, how could you infer from that it was
 8 going to be minimized. Sure, it might be
 9 aggravated or -
 10 MR. OTTENHEIMER:
 11 A. Well, I mean, again, that is language that is
 12 used by somebody else, and I think that Ms.
 13 Chaplin has to be asked.
 14 COFFEY, Q.C.:
 15 Q. And I appreciate that, and she will be, but
 16 I'm asking you.
 17 MR. OTTENHEIMER:
 18 A. I don't -
 19 COFFEY, Q.C.:
 20 Q. You were her Minister -
 21 MR. OTTENHEIMER:
 22 A. I don't recall that reference being made, I
 23 don't, but it's best to ask Ms. Chaplin.
 24 COFFEY, Q.C.:
 25 Q. And either that reference or anything from

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1 which you could draw an inference that would
 2 make that reference -
 3 MR. OTTENHEIMER:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. You don't remember anything like that.
 7 MR. OTTENHEIMER:
 8 A. I have no specific recollection.
 9 COFFEY, Q.C.:
 10 Q. If we could please, I'd like to go to exhibit
 11 P-0124. You could just look at P-0124, Page -
 12 let me just see - well, Page 2. Now this is a
 13 briefing note. It's "ER/PR Testing Results,
 14 September 30, 2005," and, I take it, from our-
 15 -when you were before the Commission last
 16 Monday, you have no recollection of having
 17 seen this one and it's not on your
 18 department's letterhead or in their format, so
 19 it's--you couldn't recall that. But if we
 20 could go to Page 4, please, of P-0124. Now
 21 this is a briefing note, a Department of
 22 Health and Community Services briefing note,
 23 October 3, 2005, two pages long, prepared by
 24 Moira Hennessey, approved by John Abbott, by
 25 your ADM and DM. And this would be prepared

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1 for your benefit?
 2 MR. OTTENHEIMER:
 3 A. This would be prepared for--I would think,
 4 yes, I would think for the Minister's office.
 5 COFFEY, Q.C.:
 6 Q. Ie. for you. Perhaps for others, but
 7 certainly for you.
 8 MR. OTTENHEIMER:
 9 A. I would be included in that group, yes.
 10 COFFEY, Q.C.:
 11 Q. Yes. Looking at this--at this point - this
 12 had just gone public the day before - what was
 13 your understanding about the split, or if you
 14 had understanding, the split between the
 15 number of patients from the St. John's area
 16 and the patients from outside St. John's?
 17 MR. OTTENHEIMER:
 18 A. The actual numbers?
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. OTTENHEIMER:
 22 A. No firm recollection of exactly that division
 23 being made.
 24 COFFEY, Q.C.:
 25 Q. You did understand though--you were given to

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1 understand that there were a significant
 2 number of patients from outside St. John's,
 3 like from Grand Falls, Gander.
 4 MR. OTTENHEIMER:
 5 A. As it affects the one lab, yes.
 6 COFFEY, Q.C.:
 7 Q. Right. Sure. Yes.
 8 THE COMMISSIONER:
 9 Q. I'm sorry, Mr. Ottenheimer, just to make sure
 10 that I understand, you're agreeing that you
 11 knew that this, shall we say problem, affected
 12 persons from out--who lived outside of the St.
 13 John's area.
 14 MR. OTTENHEIMER:
 15 A. Outside the St. John's are, yeah.
 16 THE COMMISSIONER:
 17 Q. But you do not recall any numbers as to how
 18 big that would be.
 19 MR. OTTENHEIMER:
 20 A. How that split or divisioned?
 21 THE COMMISSIONER:
 22 Q. Uh-hm.
 23 MR. OTTENHEIMER:
 24 A. Not specifically, Madam Commissioner.
 25 THE COMMISSIONER:

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1 Q. Do you recall whether or not somebody might
 2 have said, well, half of them are, one-third
 3 of them are, not very many are. Anything of
 4 that nature?
 5 MR. OTTENHEIMER:
 6 A. I recall--again, it may from reading one of
 7 the briefing notes, or it may have been a
 8 result of one of the meetings, reference to, I
 9 think, Dr. Cook, at Eastern Health requesting
 10 that samples be forwarded to St. John's.
 11 There's some vague recollection to that
 12 effect, but I was certainly aware of the fact
 13 that the samples were provincial in nature.
 14 THE COMMISSIONER:
 15 Q. Okay.
 16 COFFEY, Q.C.:
 17 Q. Yes, at the bottom of Page 4 of the exhibit.
 18 It's the first page of the briefing note. The
 19 last bullet says "Laboratory Directors in the
 20 province were contacted over the past few
 21 months to submit all negative ER and PR
 22 reports and samples for the same time period
 23 for retesting to Eastern Health." And it goes
 24 on from there, "the process being under way,"
 25 and there are numbers referred to. So as of

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1 October 3rd--and certainly in writing you
 2 would have been informed that there were
 3 samples from outside St. John's that had to be
 4 sent.
 5 MR. OTTENHEIMER:
 6 A. I was certainly aware, Mr. Coffey--
 7 COFFEY, Q.C.:
 8 Q. Sure.
 9 MR. OTTENHEIMER:
 10 A. --that this was a provincial issue in that
 11 sense, yes.
 12 COFFEY, Q.C.:
 13 Q. Look at the second-last bullet on the second
 14 page of this briefing note. This is the
 15 reference to the External Peer Review of the
 16 Chief Pathologist and Chief Technologist. The
 17 last sentence in that bullet reads "Debriefing
 18 was held after each review, and a full report
 19 from each is expected within the next few
 20 weeks." Okay?
 21 MR. OTTENHEIMER:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. So that doesn't suggest there, does it, Mr.
 25 Ottenheimer, that they'll be back in April of

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1 '06, or anything like that. This says that
 2 "Debriefing was held" - the past tense -
 3 "after each review, and a full report from
 4 each is expected within the next few weeks."
 5 MR. OTTENHEIMER:
 6 A. And that's clearly what it states, but we do
 7 know that there was the implementation stage--
 8 COFFEY, Q.C.:
 9 Q. No, and we'll get to that in a moment.
 10 MR. OTTENHEIMER:
 11 A. --and further assessments that were being
 12 done.
 13 COFFEY, Q.C.:
 14 Q. I'll get to that, okay? So as of October 3rd
 15 when you read this - and I presume you read it
 16 that day - or do you have any reason to
 17 believe you wouldn't have read it that day?
 18 MR. OTTENHEIMER:
 19 A. No, that information was shared with me that
 20 day.
 21 COFFEY, Q.C.:
 22 Q. Okay. So you would have thought by Halloween,
 23 as it were, the full reports from each of
 24 these individuals will be in.
 25 MR. OTTENHEIMER:

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1 A. Certainly, based on that wording, it was
 2 certainly the expectation that this process
 3 would be finalized in the not-too-distant
 4 future.
 5 COFFEY, Q.C.:
 6 Q. Yeah, "within the next few weeks."
 7 MR. OTTENHEIMER:
 8 A. According to the wording, yes.
 9 COFFEY, Q.C.:
 10 Q. Yes. If we could go, please, to exhibit P-
 11 0096. Now you go toward the bottom of the
 12 page. There's an e-mail from Moira Hennessey
 13 to George Tilley, Thursday, November 3rd, at
 14 14:07 hours, 2005. Subject is "ER/PR." She
 15 says, "Hi George, can you give me an update on
 16 the contacting of patients? Where are we and
 17 when will all patients be contacted. We need
 18 to ensure that the Minister can state all
 19 patients have been contacted, when the House
 20 opens later this month. Also, have you
 21 received the report from the Chief Pathologist
 22 at the BC Cancer Institute and the Chief
 23 Technologist at Mount Sinai. If yes, can you
 24 give me a quick update to reflect in the HOA
 25 note. Thanks. Moira." And Mr. Tilley comes

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1 back to Ms. Hennessey and copies it to Dr.
 2 Robert Williams Thursday, November 3rd, 2005,
 3 at 2:15 P.M. which, by my calculations, is
 4 about eight minutes later saying, "Moira, I'm
 5 in Ottawa. I know a briefing meeting has been
 6 set for the Minister on November 17th to brief
 7 him for the House. In the meantime, if there
 8 is some immediate need you have in the
 9 interim, I ask that you touch base with Bob
 10 Williams. Signed, George." So in early
 11 November 2005, more than a few weeks have
 12 passed since October 3rd.
 13 MR. OTTENHEIMER:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. Anybody who had read the October 3rd briefing
 17 note would know that those full reports should
 18 be in, correct?
 19 MR. OTTENHEIMER:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Moira Hennessey was your ADM.
 23 MR. OTTENHEIMER:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. Responsible for dealing with Eastern Health.
 2 MR. OTTENHEIMER:
 3 A. For Board issues.
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 MR. OTTENHEIMER:
 7 A. Correct.
 8 COFFEY, Q.C.:
 9 Q. And she's looking for an update to reflect in
 10 the Minister's House of Assembly briefing note
 11 - that is your briefing note - concerning the
 12 report from the Chief Pathologist and the
 13 Chief Technologist.
 14 MR. OTTENHEIMER:
 15 A. Uh-hm.
 16 COFFEY, Q.C.:
 17 Q. Now that wouldn't be surprising to you, would
 18 it, at that point? The House is about to
 19 open.
 20 MR. OTTENHEIMER:
 21 A. No. And it's clear what her request is there,
 22 yes.
 23 COFFEY, Q.C.:
 24 Q. And she's certainly asking Mr. Tilley to
 25 confirm that they've received the reports.

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1 MR. OTTENHEIMER:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. And wants a quick update. We can go, please,
 5 to P-0097. Now there's two e-mails, but the
 6 one at the bottom is the first in time. It's
 7 from Moira Hennessey, Thursday, November 3,
 8 2005, at 2:56 P.M., to Dr. Robert Williams,
 9 "Subject, ER/PR. Hi Bob, can you please give
 10 me an update on where you are with the contact
 11 of patients. I understand the process is
 12 ongoing and there have been some problems.
 13 Also, have you received the report from the BC
 14 Pathologist and the Mount Sinai Technologist?
 15 If yes, what is the general finding(s)? Well,
 16 I know you are briefing the Minister later
 17 this month. We have to complete the first
 18 draft of the House of Assembly briefing notes
 19 by tomorrow. I will then update it after the
 20 meeting with the Minister. Thanks. Moira."
 21 So knowing Ms. Hennessey--your observations of
 22 Ms. Hennessey--she appear to you to be a very
 23 diligent sort?
 24 MR. OTTENHEIMER:
 25 A. I found her to be quite diligent and took her

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1 role and responsibility very seriously, yes.
 2 COFFEY, Q.C.:
 3 Q. And so at 2:15, Mr. Tilley is advising her, if
 4 you want to know something in the interim,
 5 touch base with Bob Williams. And within, I
 6 don't know, 40, 41 minutes, she's typed an e-
 7 mail to Dr. Williams asking for information
 8 concerning those reports from the BC
 9 Pathologist and the Mount Sinai Technologist
 10 and the general finding or findings. And,
 11 sir, in November of 2005, were you made aware
 12 that Moira Hennessey was looking for that
 13 information?
 14 MR. OTTENHEIMER:
 15 A. That--I know that issue came up last week and
 16 that is certainly possible. Whether, again,
 17 it's one of those situations where I had
 18 requested it or whether it was indicated to me
 19 in passing, again, I cannot be specific, but
 20 it's clear there that the request was made.
 21 COFFEY, Q.C.:
 22 Q. And having made such a request, I take it, you
 23 would expect to get a response.
 24 MR. OTTENHEIMER:
 25 A. One would think.

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1 COFFEY, Q.C.:
 2 Q. Exhibit P-0098, please. Now this is an e-mail
 3 from Heather Predham sent Friday, November 4,
 4 2005, at 5 P.M. to Moira Hennessey and to Dr.
 5 Robert Williams, carboned to Denise Dunn. The
 6 subject is "ER/PR update," and Heather Predham
 7 begins, "Hi Moira, I understand you were
 8 speaking to Dr. Williams and required an
 9 update as to our communications efforts
 10 regarding the ER/PR situation." And it goes
 11 on from there, "The following information
 12 represents 611 individuals," and it goes in
 13 some detail about that. But if you, yourself,
 14 as Minister were very interested in knowing
 15 what the numbers were, who was contacted--that
 16 you could say when the House opened that
 17 everybody had been contacted.
 18 MR. OTTENHEIMER:
 19 A. I was--obviously, this was an important public
 20 issue. It was important to me as Minister
 21 and--which is why that throughout this
 22 process, Mr. Coffey, I had requested updates
 23 and I wanted to as briefed as well as I could
 24 be, yes.
 25 COFFEY, Q.C.:

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1 Q. So, because the day before - I'm sorry, the
 2 day before--well, actually, yes it was the day
 3 before - on Thursday, Moira was telling -
 4 that's Moira Hennessey - was telling George
 5 Tilley, "We need to ensure that the Minister,"
 6 - i.e. you - "can state all patients have been
 7 contacted, when the House opens later this
 8 month." So, I take it, you were--had you
 9 expressed that view that you wanted to be able
 10 to tell people--the Newfoundland people, that--
 11 Newfoundland and Labrador people that that
 12 was so?
 13 MR. OTTENHEIMER:
 14 A. That may or may not have been discussed with
 15 my officials. That could be. Again, it's--
 16 COFFEY, Q.C.:
 17 Q. Yeah.
 18 MR. OTTENHEIMER:
 19 A. The--you know, I think it's important as well
 20 to realize - and I know I return to this point
 21 - but I think, Mr. Coffey, it has to be
 22 repeated. I mean, this was an operational
 23 issue under the management--the day-to-day
 24 management of Eastern Health. Upon this issue
 25 becoming public, Eastern Health took it upon

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1 itself to advise patients, to set up a
 2 telephone line, to have ads in the local
 3 newspapers, to do a variety of television and
 4 radio interviews, to provide information to
 5 the public as--presumably as the information
 6 was received by them. From my view as
 7 Minister, from my vantage point, this was an
 8 operational issue, as I say, being managed on
 9 a day-to-day basis by Eastern Health. They
 10 were in the forefront and they were dealing
 11 with the public and, presumably, with the
 12 individuals, once information was received.
 13 COFFEY, Q.C.:
 14 Q. So then if that is so, then why would it be
 15 necessary for you to be able to ensure that
 16 you could state that all patients had been
 17 contacted?
 18 MR. OTTENHEIMER:
 19 A. I guess it was important for me to have as
 20 much information on this as Minister. I mean,
 21 it's a public health issue and I needed to
 22 know what I believed to be--as much as I could
 23 as the Minister of the day, on this issue.
 24 COFFEY, Q.C.:
 25 Q. But as well, it wasn't just that you know, but

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1 that you'd be able to state. That's what that
 2 says, ie. you were going to make a statement,
 3 or prepare to make a statement, on an
 4 operational matter.
 5 MR. OTTENHEIMER:
 6 A. I wanted to be familiar with as much up-to-
 7 date information as I could have on this
 8 information, yes, of course.
 9 COFFEY, Q.C.:
 10 Q. So then the idea of you actually being
 11 involved in operational matters by way of
 12 assuring the public, or being able to ensure
 13 the public that all patients have been
 14 notified, you certainly prepared to get
 15 involved to that extent.
 16 MR. OTTENHEIMER:
 17 A. Well, I mean, involvement--there's a very, I
 18 think, distinct difference, Mr. Coffey,
 19 between direct involvement in operational
 20 matters and being able to speak to what the
 21 status of an operational matter is. I mean,
 22 the two of these issues are clearly separate
 23 and apart.
 24 COFFEY, Q.C.:
 25 Q. Now you did tell us last Monday that at one

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1 point when you found out the number of times
 2 they were going to run--or were running the ad
 3 that you told them that, in your view, it
 4 should be run more than--so -
 5 MR. OTTENHEIMER:
 6 A. I recall that at one point, yes.
 7 COFFEY, Q.C.:
 8 Q. So you're prepared to intercede operationally
 9 or at least give operational advice.
 10 MR. OTTENHEIMER:
 11 A. You know, in a general discussion, I
 12 mean, you know, there may be the to-ing
 13 and fro-ing and sharing of information.
 14 It's not as if as Minister I was taking
 15 it upon myself to become involved
 16 directly in operational issues. I mean,
 17 that is clearly the responsibility of the
 18 Health Care Authority. But if in a
 19 meeting with perhaps ten or twelve people
 20 in attendance, I mean, the sharing of a
 21 view or the offering of an opinion - for
 22 example, how many times a newspaper ad
 23 should be placed on an important public
 24 issue, that's clear--that's, as I see it,
 25 not a--not--you know, I'm not then

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1 abdicating my role as Minister and
 2 jumping into the fray of operational
 3 actions on a day-to-day basis. I'm
 4 simply sharing a view and no more to it
 5 than that, but it was clearly in my mind
 6 always the view that from an operational
 7 standpoint, this was the full
 8 responsibility of Eastern Health - in
 9 other words, the local Health Care
 10 Authority.
 11 COFFEY, Q.C.:
 12 Q. If you could turn to exhibit P-0100, please.
 13 Actually, I apologize. Can we just go back
 14 for a moment, please, to exhibit P-0124
 15 because this - Page 8, please. This is a
 16 briefing--questions and answers briefing note.
 17 This would be one for the House of Assembly, I
 18 take it, Mr. Ottenheimer.
 19 MR. OTTENHEIMER:
 20 A. One of perhaps a number--
 21 COFFEY, Q.C.:
 22 Q. One of a number?
 23 MR. OTTENHEIMER:
 24 A. --that were prepared in preparation for that.
 25 COFFEY, Q.C.:

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1 Q. Sure. But this type of briefing note is
 2 prepared to brief you, prepare you, for the
 3 House of Assembly. That's correct?
 4 MR. OTTENHEIMER:
 5 A. This among others, yes.
 6 COFFEY, Q.C.:
 7 Q. Okay. But these are specifically meant for
 8 the House of Assembly.
 9 MR. OTTENHEIMER:
 10 A. I guess, in one since, Mr. Coffey, all
 11 briefing notes are in preparation, I would
 12 think to some extent, for the House of
 13 Assembly.
 14 COFFEY, Q.C.:
 15 Q. Is there a binder or a file folder of
 16 question-and-answer briefing notes that's
 17 available to a Minister for the House of
 18 Assembly?
 19 MR. OTTENHEIMER:
 20 A. I would--yes, there is. I would think the
 21 Director of Communications would certainly
 22 have one, and there is a binder. In fact, the
 23 Minister--any Minister on a day-to-day basis
 24 when the House opens, would take this briefing
 25 book with him or her and included in that,

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1 presumably, would be briefing notes such as
 2 the one we have before us.
 3 COFFEY, Q.C.:
 4 Q. And this one of November 7, 2005, when you
 5 look at the second page of it, just to go down
 6 there. It's prepared by Moira Hennessey.
 7 This is the sort of note that would appear in
 8 that binder.
 9 MR. OTTENHEIMER:
 10 A. This is typical of a briefing note, yes.
 11 COFFEY, Q.C.:
 12 Q. Yes, okay. Now the issue is framed here--
 13 well, the title is "Retesting of Breast Cancer
 14 Patients." The issue is framed "Breast cancer
 15 patients are struggling for answers these
 16 days. Some patients may have missed out on a
 17 drug therapy, Tomoxifen, that lowers the risk
 18 of the cancer recurring. Some patients say
 19 it's hard to find out whether their results
 20 are right or not." And then the "Anticipated
 21 Questions," "When did the Minister find out
 22 about the inaccurate cancer test results?"
 23 And do you know--if you look through this,
 24 please, can you find the answer to that
 25 question here?

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1 MR. OTTENHEIMER:
 2 A. Quite possibly not. I mean, it's not a--the
 3 preparing of a briefing note, as we can see,
 4 is not a perfect--you know, it's not a perfect
 5 exercise at all times. In fact, I think only
 6 relatively recently some standards have been
 7 established in terms of how a briefing note
 8 ought to be structured and prepared. But, you
 9 know, it is perhaps not uncommon to--for
 10 questions to be asked and complete answers not
 11 to be given in a briefing note. As I say,
 12 it's not--it's not a perfect exercise as we
 13 can perhaps see by the very briefing note that
 14 you're now referring to and the question that
 15 you're about to ask.
 16 COFFEY, Q.C.:
 17 Q. Yeah. Well, so--in any case, sir, you know,
 18 that would be a fairly easy question to
 19 answer, wouldn't it, I mean, in terms of--
 20 within a day or so, you'd be able to say on
 21 November 7th--looking back, you would have
 22 been able to very easily ascertain July 19th.
 23 Now when did the Minister first find about the
 24 inaccurate cancer test results?
 25 MR. OTTENHEIMER:

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1 A. On that point -
 2 COFFEY, Q.C.:
 3 Q. Who best to know that would be--except you?
 4 MR. OTTENHEIMER:
 5 A. On that point -
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. OTTENHEIMER:
 9 A. That one is straightforward, yes.
 10 COFFEY, Q.C.:
 11 Q. The second question is, "How did this happen?
 12 What is being done to correct this problem?"
 13 Now this would be the briefing note,
 14 presumably, that Ms. Hennessey was speaking--
 15 or conferring with or communicating with
 16 George Tilley about in C-0096 and Dr. Robert
 17 Williams in C-0097. She says, "I got to
 18 prepare a briefing note." This is Thursday
 19 and Friday, November 3rd and 4th, and November
 20 7th is a Monday. So, presumably, this is the
 21 briefing note in question, this ER/PR.
 22 MR. OTTENHEIMER:
 23 A. Is this the one dated November 7th?
 24 COFFEY, Q.C.:
 25 Q. Yes. That would be the--

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1 MR. OTTENHEIMER:
 2 A. That's -
 3 COFFEY, Q.C.:
 4 Q. If you're asking for information on Thursday
 5 and Friday--
 6 MR. OTTENHEIMER:
 7 A. Uh-hm.
 8 COFFEY, Q.C.:
 9 Q. --about Chief Pathologist reports, Chief
 10 Technologist reports.
 11 MR. OTTENHEIMER:
 12 A. Uh-hm.
 13 COFFEY, Q.C.:
 14 Q. And you have taken part in preparing a
 15 briefing note on October 3rd saying the
 16 results are going to be back in a few weeks.
 17 MR. OTTENHEIMER:
 18 A. Uh-hm.
 19 COFFEY, Q.C.:
 20 Q. Well, it's not surprising she'd be looking for
 21 them, and this a briefing note that she was
 22 looking to prepare.
 23 MR. OTTENHEIMER:
 24 A. Dated November 7th.
 25 COFFEY, Q.C.:

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1 Q. Seventh, yes.
 2 MR. OTTENHEIMER:
 3 A. Uh-hm.
 4 COFFEY, Q.C.:
 5 Q. Now there isn't anything in this, is there,
 6 about how did this happen, which is the second
 7 anticipated question.
 8 MR. OTTENHEIMER:
 9 A. Uh-hm. Which goes to my point that it's--you
 10 know, it's not a perfect exercise as we can
 11 all see, and often questions may be posed and
 12 the messaging perhaps for whatever reason in
 13 some cases may not respond to the anticipated
 14 question on a particular point.
 15 COFFEY, Q.C.:
 16 Q. Why is that? I mean -
 17 MR. OTTENHEIMER:
 18 A. The--I guess, you know, the preparer of the
 19 note is perhaps best--best--you know, the best
 20 person to be asked in that case -
 21 COFFEY, Q.C.:
 22 Q. And I will be -
 23 MR. OTTENHEIMER:
 24 A. And now these things, unfortunately, can
 25 happen.

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1 COFFEY, Q.C.:
 2 Q. I will be asking Ms. Hennessey and Mr. Abbott-
 3 -
 4 MR. OTTENHEIMER:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. --and others.
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. What I'm asking you is the person for whom the
 12 note was prepared.
 13 MR. OTTENHEIMER:
 14 A. Right.
 15 COFFEY, Q.C.:
 16 Q. The question is not--the question is posed.
 17 You would acknowledge it was a legitimate
 18 question.
 19 MR. OTTENHEIMER:
 20 A. Sure.
 21 COFFEY, Q.C.:
 22 Q. As of November 7th.
 23 MR. OTTENHEIMER:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. It has certainly crossed your mind before
 2 that.
 3 MR. OTTENHEIMER:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. Yet, there's no answer.
 7 MR. OTTENHEIMER:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. So how can you, as a Minister, get a briefing
 11 note that poses a question of which you were
 12 aware, and yet you read through it and there's
 13 no answer and you let it--is that what you--
 14 you just kind of do that and let it lie there?
 15 MR. OTTENHEIMER:
 16 A. No, you would--if that--if that matter were
 17 addressed, you would obviously attempt to
 18 answer that question to the best of your
 19 ability, based on the information that you--
 20 that you have.
 21 COFFEY, Q.C.:
 22 Q. But when you get the briefing note on November
 23 7th or 8th -
 24 MR. OTTENHEIMER:
 25 A. Right.

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1 COFFEY, Q.C.:
 2 Q. The morning of the 8th, whenever it came to
 3 you.
 4 MR. OTTENHEIMER:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. You looked through it. Now the question is
 8 posed.
 9 MR. OTTENHEIMER:
 10 A. Uh-hm.
 11 COFFEY, Q.C.:
 12 Q. Wouldn't you kind of wander out to Moira's
 13 office or phone out and say, "where's the
 14 answer to that, Moira?" I mean, there's a
 15 disconnect here, isn't there, between the
 16 questions and the lack of answers.
 17 MR. OTTENHEIMER:
 18 A. Again, I think it's representative of perhaps
 19 a briefing note that could have been drafted
 20 in a much better way. There's no denying
 21 that. I mean, it raises and poses certain
 22 points. In fact, much of the information
 23 that's there, if I may add--
 24 COFFEY, Q.C.:
 25 Q. Sure.

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1 MR. OTTENHEIMER:
 2 A. --I mean, that there's background information.
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. OTTENHEIMER:
 6 A. I mean, there's only four bullets and
 7 anticipated questions.
 8 COFFEY, Q.C.:
 9 Q. Yeah.
 10 MR. OTTENHEIMER:
 11 A. But we have a page and a half of additional
 12 information. So there may not be a specific
 13 reference to an anticipated question but, at
 14 the same time, there's information here that
 15 could answer a whole host of other questions.
 16 COFFEY, Q.C.:
 17 Q. But it doesn't answer -
 18 MR. OTTENHEIMER:
 19 A. So it need not be a perfect document and, in
 20 this particular case, it's clearly not a
 21 perfect document.
 22 COFFEY, Q.C.:
 23 Q. But, sir, with respect, the first anticipated
 24 question you knew the answer to anyway.
 25 MR. OTTENHEIMER:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. The second anticipated question, which was
 4 "How did this happen?" -
 5 MR. OTTENHEIMER:
 6 A. Uh-hm.
 7 COFFEY, Q.C.:
 8 Q. I can stand here and read it all the way out,
 9 but you and I will both agree that there is no
 10 answer to that question.
 11 MR. OTTENHEIMER:
 12 A. There is no direct answer to that question.
 13 COFFEY, Q.C.:
 14 Q. Is there even any -
 15 MR. OTTENHEIMER:
 16 A. Not -
 17 COFFEY, Q.C.:
 18 Q. Is there even an indirect one?
 19 MR. OTTENHEIMER:
 20 A. Not--not only -
 21 COFFEY, Q.C.:
 22 Q. Is there even an indirect answer?
 23 MR. OTTENHEIMER:
 24 A. Other than from the point of view that there
 25 is a process that is ongoing and is yet to be

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1 completed.
 2 COFFEY, Q.C.:
 3 Q. Okay. When we look at that--
 4 MR. OTTENHEIMER:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. --at the second page of the briefing note,
 8 Page 9, please. I think we're already there.
 9 Yeah, Page 9. We go down one, two, three,
 10 four, five, six - sixth bullet. "A quality
 11 review started in May. It has included an
 12 internal review of testing processes and an
 13 external review by the Chief Pathologist at
 14 the BC Cancer Institute and the Chief
 15 Technologist at Mount Sinai Hospital." Okay?
 16 MR. OTTENHEIMER:
 17 A. Uh-hm.
 18 COFFEY, Q.C.:
 19 Q. Now--and we look back at Page--exhibit P-0124,
 20 Page 5 - same exhibit. That's exhibit P-0124,
 21 Page 5. Right here. Back on October 3rd,
 22 you're being advised in writing that a full
 23 report from the Chief Technologist and Chief
 24 Pathologist - from each of them - is expected
 25 within the next few weeks. If we could go to

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1 Page 9, please, under that bullet I just
 2 looked at with you, "A quality review started
 3 in May." It refers to an external review by
 4 the Chief Pathologist and the Chief
 5 Technologist. So this is more than a month
 6 later after October 3rd.
 7 MR. OTTENHEIMER:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. There's no update here on where those reports
 11 are.
 12 MR. OTTENHEIMER:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. Moira Hennessey on October--on November 3rd
 16 and 4th - and, particular, on November 3rd -
 17 is asking Mr. Tilley and Dr. Williams are the
 18 reports in and what are the general findings.
 19 There's no response.
 20 MR. OTTENHEIMER:
 21 A. Correct.
 22 COFFEY, Q.C.:
 23 Q. Well, actually, there is a response and I'll
 24 get to that in a moment, but there's no
 25 response in the written document here. That's

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1 not referenced, and you're us then that--"How
 2 did this happen?" is the substantive question
 3 in the anticipated questions -because when you
 4 knew, it wasn't substantive to you - "How did
 5 this happen?," November 7th. These external
 6 reviews are both referred to on the second
 7 page of it. You've been told a month before
 8 that they'd be in in a few weeks. Yet, you
 9 don't -
 10 MR. OTTENHEIMER:
 11 A. Well, I was--I simply -
 12 COFFEY, Q.C.:
 13 Q. You don't ask anything? You don't -
 14 MR. OTTENHEIMER:
 15 A. Well, I simply respected the view that the
 16 process was not complete.
 17 COFFEY, Q.C.:
 18 Q. But where is--
 19 MR. OTTENHEIMER:
 20 A. If I were -
 21 COFFEY, Q.C.:
 22 Q. Where is that? Where -
 23 MR. OTTENHEIMER:
 24 A. If I were told -
 25 COFFEY, Q.C.:

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1 Q. No, if I could -
 2 MR. OTTENHEIMER:
 3 A. No, no, Mr. Coffey -
 4 COFFEY, Q.C.:
 5 Q. Yeah, if I could ask -
 6 MR. OTTENHEIMER:
 7 A. No, I'd like to just--
 8 COFFEY, Q.C.:
 9 Q. Sure.
 10 MR. OTTENHEIMER:
 11 A. Complete my thought, if I may.
 12 COFFEY, Q.C.:
 13 Q. Sure.
 14 MR. OTTENHEIMER:
 15 A. If I were told that information is not going
 16 to be shared with you, I would have difficulty
 17 with that and I stated that, I believe, a week
 18 ago when this issue was raised at that time.
 19 I was certainly of the understanding that this
 20 work was being carried out in different
 21 stages. I was of the view--and if this issue
 22 were raised with me, my response would be
 23 along the lines that this is an exercise that
 24 has yet to be completed and--but I would
 25 indicate as well that upon completion of the

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1 exercise, I would certainly anticipate and
 2 expect, as the Minister of Health and
 3 Community Services, to receive in its totality
 4 this review, its recommendations and whatever
 5 information that was disclosed to Eastern
 6 Health at that time, and that would be my
 7 expectation.
 8 COFFEY, Q.C.:
 9 Q. Now if you could look through the November 7th
 10 briefing note--
 11 MR. OTTENHEIMER:
 12 A. Uh-hm.
 13 COFFEY, Q.C.:
 14 Q. --and show me where that is.
 15 MR. OTTENHEIMER:
 16 A. It may not -
 17 COFFEY, Q.C.:
 18 Q. Show me where in this -
 19 MR. OTTENHEIMER:
 20 A. It may--and we've already explored that and we
 21 know that that is not there in the briefing
 22 note.
 23 COFFEY, Q.C.:
 24 Q. Okay
 25 MR. OTTENHEIMER:

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1 A. But that was certainly my understanding at
 2 that time.
 3 COFFEY, Q.C.:
 4 Q. That's what I'm asking, where did you garner
 5 that from?
 6 MR. OTTENHEIMER:
 7 A. I cannot recall specifically. It's clearly
 8 not in this briefing note, but it was
 9 certainly my understanding at the time that
 10 the exercise had yet to be completed.
 11 COFFEY, Q.C.:
 12 Q. Well, you would have gotten that from John
 13 Abbott or Moira Hennessey?
 14 MR. OTTENHEIMER:
 15 A. I cannot recall.
 16 COFFEY, Q.C.:
 17 Q. Or both.
 18 MR. OTTENHEIMER:
 19 A. I cannot recall, Mr. Coffey.
 20 COFFEY, Q.C.:
 21 Q. Is there anyone else you would have gotten it
 22 from?
 23 MR. OTTENHEIMER:
 24 A. I simply cannot recall. It was a belief I had
 25 at that time. Who had shared that with me--

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1 again, in the context of a senior executive
 2 position in government of the largest
 3 department in government on a variety of
 4 issues that you're dealing with in the public
 5 health sector on the day-to-day basis, I
 6 cannot recall who may have said what to me at
 7 any particular point in time on a particular
 8 issue. I mean, that is simply something that
 9 just does not happen.

10 COFFEY, Q.C.:
 11 Q. Okay.

12 MR. OTTENHEIMER:
 13 A. And I think that has to be appreciated. And
 14 as I've said last week, and I wish to, if I
 15 may, Madam Commissioner, state it once again,
 16 we are focusing--this is a very delicate,
 17 difficult issue of public health affecting so
 18 many of our fellow Newfoundlanders and
 19 Labradorians. It is being looked at today
 20 some two and a half, three years later, not in
 21 the context of the day two and a half to three
 22 years before. In carrying out the role of the
 23 Minister of Health, Minister of Health and
 24 Community Services, on any given day, Mr.
 25 Coffey, on any given day I could be dealing

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1 with issues of acute care, institutional care,
 2 evictions, the OxyContin crisis that we had,
 3 mental health, day care, adoptions, our
 4 Aboriginal children and this obviously, this
 5 very delicate issue being another one of them,
 6 there's a whole host of areas that an
 7 individual is dealing with. And there are
 8 briefings and there are meetings and there
 9 public presentations and there is the
 10 obligation to the House of Assembly and the
 11 Cabinet participation. The Department of
 12 Health and Community Services is singularly
 13 the largest department in government. And a
 14 minister of the day, whoever he or she may be,
 15 has to deal with a host of very sensitive,
 16 delicate public health issues. And to ask me
 17 who may have said what at a particular moment
 18 in time on a particular point almost three
 19 years ago, it is simply not possible on all of
 20 these issues. Clearly in some I can be more
 21 specific, but on all of the questions that are
 22 asked it's simply, Mr. Coffey, not possible.

23 COFFEY, Q.C.:
 24 Q. Okay. So some things you can remember and
 25 some you can't?

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1 MR. OTTENHEIMER:
 2 A. Some things stand out in my mind.

3 COFFEY, Q.C.:
 4 Q. Sure.

5 MR. OTTENHEIMER:
 6 A. And some impressions are formed. But there
 7 are other details where simply that is not
 8 possible.

9 COFFEY, Q.C.:
 10 Q. If we could go to Exhibit P-0100, please?
 11 Now, sir, this is a series of e-mails which
 12 find they're in--begin on December 2nd, 2005
 13 at 8:29 a.m. from Tansy Mundon, who was then
 14 your Director of Communications and had been
 15 for a number of months, to Deborah Thomas
 16 Pennell. The subject is ER/PR. It's at page
 17 2 of the exhibit, Commissioner. And it says,
 18 "Thanks for the heads up yesterday. I heard
 19 the story this morning. Is it accurate to
 20 say, though, that only a quarter of the
 21 samples have been tested?" And there's a
 22 whole series then of e-mails back and forth
 23 about the numbers. And if we could, in the
 24 middle of the page, the first page of the
 25 exhibit, there's a--says here, "Original

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1 message." And this is from Tansy Mundon to
 2 Darrell Hynes, who is your Executive
 3 Assistant, John Abbott, who is your Deputy
 4 Minister. Tara Furlong was your what?

5 MR. OTTENHEIMER:
 6 A. She worked in communications. I think she was
 7 new to the Department at that time.

8 COFFEY, Q.C.:
 9 Q. Okay.

10 MR. OTTENHEIMER:
 11 A. And assisted the Director of Communications,
 12 as I recall.

13 COFFEY, Q.C.:
 14 Q. And to Moira Hennessey. Sent December 2nd,
 15 2005 at 5:24 p.m. The subject is "Forward:
 16 Re: ER/PR." And it says, "Potential issue for
 17 Monday's session." Now, in that context
 18 Monday's session presumably would be the House
 19 of Assembly?

20 MR. OTTENHEIMER:
 21 A. It's possible. The House would have been open
 22 at that time, that's correct.

23 COFFEY, Q.C.:
 24 Q. Yes. Now, if we go up further, right here
 25 again there's an original message right here

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1 just below the top of the page from Moira
 2 Hennessey dated Monday, December 5th, 2005, in
 3 fact, nine minutes past midnight, apparently.
 4 December 5th, 2005. It's right towards the
 5 top of the page, Commissioner, it's right
 6 there. I apologize. Further up. Apologize.
 7 Right there.
 8 THE COMMISSIONER:
 9 Q. Okay.
 10 COFFEY, Q.C.:
 11 Q. Right there. Actually, right here,
 12 Commissioner. It's "Original message" is
 13 right there, from Moira Hennessey, December 5,
 14 2005 at nine minutes past midnight. It's to
 15 Tansy Mundon, carboned to John Rumboldt.
 16 Subject is "Re: Forward: Re: ER/PR." And she
 17 says the following, "Hi Tansy, I'm also
 18 surprised that only 25 percent of the test
 19 results are back. This has been ongoing since
 20 this summer and I thought Mount Sinai was
 21 using extra staff overtime to get these tests
 22 done as quickly as possible. From a patient's
 23 perspective this is becoming less and less
 24 acceptable and it is likely the Minister will
 25 be subject to some hard questioning on why

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1 things went wrong and why it is taking so long
 2 to get the results from Mount Sinai. John,
 3 can you please update the briefing note with
 4 the test results data before the Minister goes
 5 to the House tomorrow? You may need to work
 6 with Tansy on new questions/key messages.
 7 Thanks, Moira." So certain Moira Hennessey,
 8 your ADM, Tansy Mundon, your Director of
 9 Communications, on December 5th, 2005 thought
 10 that you might be the next day subject to some
 11 hard questioning on why things went wrong,
 12 suggesting that perhaps they would have
 13 discussed why things, and those hard
 14 questioning, that you'd be asked about it,
 15 they would have brought that to your
 16 attention?
 17 MR. OTTENHEIMER:
 18 A. In all likelihood.
 19 COFFEY, Q.C.:
 20 Q. And that having been brought to your
 21 attention, I take it that you would have then
 22 thought, well, okay, why did things go wrong?
 23 MR. OTTENHEIMER:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

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1 Q. And you would have asked that of Moira
 2 Hennessey?
 3 MR. OTTENHEIMER:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. She's the one, the ADM responsible. And
 7 perhaps John Abbott? And you're nodding yes.
 8 In fact--now, sir, do you recall asking them
 9 those questions, like, why things went wrong?
 10 This is the beginning of December of 2005.
 11 Asking your officials why did things go wrong,
 12 what about those two reports?
 13 MR. OTTENHEIMER:
 14 A. It is, it is quite possible that that was
 15 raised. I don't want to suggest for a second
 16 that I didn't ask the question, nor can I
 17 confirm with certainty that I did. What I do
 18 know is that our lab was shut down, Mr.
 19 Coffey, and that was important to me -
 20 COFFEY, Q.C.:
 21 Q. Well, sir, the lab wasn't shut down, Mr.
 22 Ottenheimer, with all due respect, because you
 23 keep repeating that. The lab itself was never
 24 shut down, okay.
 25 MR. OTTENHEIMER:

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1 A. As it relates to these tests.
 2 COFFEY, Q.C.:
 3 Q. The ER/PR, yes, okay, that's fine.
 4 MR. OTTENHEIMER:
 5 A. Right. And that is the reference.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 MR. OTTENHEIMER:
 9 A. You know, as it relates to the tests, the
 10 types of tests that we're talking about and
 11 for the purposes of this Inquiry, the lab was
 12 shut down.
 13 COFFEY, Q.C.:
 14 Q. Well, there's ER/PR?
 15 MR. OTTENHEIMER:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. And anybody ever speak to you about IHC
 19 testing, immunohistochemical testing?
 20 MR. OTTENHEIMER:
 21 A. I think you raised that generally in
 22 discussions -
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 MR. OTTENHEIMER:

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1 A. - that we had last week, not to any detail.
 2 COFFEY, Q.C.:
 3 Q. Okay. So the fact that ER/PR, which are two
 4 separate tests?
 5 MR. OTTENHEIMER:
 6 A. Um-hm.
 7 COFFEY, Q.C.:
 8 Q. Were just part of upwards of 100 IHC tests.
 9 MR. OTTENHEIMER:
 10 A. Yeah. That was never explained to me.
 11 COFFEY, Q.C.:
 12 Q. You never understood that first nor last?
 13 MR. OTTENHEIMER:
 14 A. That was never explained to me.
 15 COFFEY, Q.C.:
 16 Q. Now when we look at, if we could, Exhibit P-
 17 0124 and look at page 10, please? And this is
 18 a question and answers briefing note. It's
 19 "Re: Retesting of breast cancer patients."
 20 And the next page, go, "As prepared by John
 21 Rumboldt, December 5, 2005," so presumably
 22 this is the briefing note that Moira was
 23 asking John Rumboldt to prepare for yourself.
 24 We go back to that anticipated questions,
 25 first one is the same as the November 7th one,

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1 which is "When did you find out?" And the
 2 second question, the substantive one I would
 3 refer to is, "How did this happen?" And when
 4 we look through the rest of this briefing
 5 note, do you seen any answer to that question,
 6 "How did this happen?"
 7 MR. OTTENHEIMER:
 8 A. No, there's no answer to that question. But
 9 my answer would have been the same as I
 10 mentioned to you earlier.
 11 COFFEY, Q.C.:
 12 Q. Okay. Was anyone telling you at the time, in
 13 early December, 2005, any of your officials
 14 telling you there is no answer, we don't know,
 15 Eastern Health doesn't know?
 16 MR. OTTENHEIMER:
 17 A. I don't recall that being said to me in that
 18 way, I don't recall that.
 19 COFFEY, Q.C.:
 20 Q. Okay, well, in any way?
 21 MR. OTTENHEIMER:
 22 A. Well, I don't recall that being said to me.
 23 COFFEY, Q.C.:
 24 Q. Okay. So if you were understanding, and you
 25 know, you've told us that in November and

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1 December, 2005 you got the impression, rightly
 2 or wrongly, that this was an ongoing process?
 3 MR. OTTENHEIMER:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. Ongoing in the sense of trying to figure out
 7 how this happened.
 8 MR. OTTENHEIMER:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. You can't identify who told you?
 12 MR. OTTENHEIMER:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. But some official or some officials must have?
 16 Is that correct? I mean, Mr. Abbott, Ms.
 17 Hennessey or someone of their -
 18 MR. OTTENHEIMER:
 19 A. That's quite possible, yes.
 20 COFFEY, Q.C.:
 21 Q. Now, we're look at Exhibits P-0046 and P-0047
 22 this morning. That's Dr. Banerjee's report
 23 and Trish Wegrynowski's report, those two
 24 reports in 2005. I suppose one could argue
 25 about whether or not Dr. Banerjee and Ms.

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1 Wegrynowski had got it right, but they
 2 certainly had expressed opinions about what
 3 had happened and what had gone wrong, didn't
 4 they?
 5 MR. OTTENHEIMER:
 6 A. They did.
 7 COFFEY, Q.C.:
 8 Q. And November 7th briefing note posed that
 9 question?
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. There's no answer in the briefing note,
 14 correct?
 15 MR. OTTENHEIMER:
 16 A. The -
 17 COFFEY, Q.C.:
 18 Q. I'm sorry, go ahead.
 19 MR. OTTENHEIMER:
 20 A. No, no. As I say, it was certainly my
 21 understanding throughout this period of time
 22 that the exercise in terms of the consultants'
 23 review was not complete. We find out that
 24 there had been submissions made and that
 25 evidence has been presented. I find that out

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1 now -
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. OTTENHEIMER:
 5 A. And we find that out. However, it was my
 6 understanding at that time that the exercise
 7 had not been complete, there was an
 8 implementation stage, there was a further
 9 evaluation stage and at a later date the last
 10 note that I received was that there would be
 11 some finality to this issue in April of 2006.
 12 COFFEY, Q.C.:
 13 Q. And I appreciate, I'll get -
 14 MR. OTTENHEIMER:
 15 A. Again, I want to go back to the point I made
 16 earlier, Mr. Coffey, because obviously what
 17 went wrong here is fundamental to this
 18 Inquiry. And with all of the evidence and all
 19 of the facts that will be presented, has been
 20 presented thus far, much more to come in weeks
 21 and months to come, Madam Commissioner Cameron
 22 will, I'm sure, as part of her report, make
 23 some relevant points, make some
 24 recommendations and will have some findings
 25 and conclusions on that issue. I go back to

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1 the point that I made earlier, Mr. Coffey, at
 2 this time as it related to ER/PR testing the
 3 lab was shut down and that there was no
 4 further testing as it relates to the subject
 5 matter of this Inquiry being done at our local
 6 lab and tests were being forwarded to Mount
 7 Sinai in Toronto. That to me gave me the
 8 assurance that the issue of patient safety as
 9 of that date had been satisfied in my own mind
 10 and patients risk was being minimized.
 11 COFFEY, Q.C.:
 12 Q. Now, sir, on December 5th, 2005 is a briefing
 13 note.
 14 MR. OTTENHEIMER:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. It's for your usage?
 18 MR. OTTENHEIMER:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. Amongst other things, as you put it last week,
 22 if you were asked a question in the House, to
 23 actually answer or be able to answer the
 24 questions.
 25 MR. OTTENHEIMER:

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1 A. I'd like to make a comment on that.
 2 COFFEY, Q.C.:
 3 Q. If you could. Okay, so -
 4 MR. OTTENHEIMER:
 5 A. No, I'd like to make the comment because that
 6 has to be put in the context of what I did, in
 7 fact, say last week, and it goes to the clear
 8 belief and understanding, not only by myself,
 9 Mr. Coffey, but by many in the Province that
 10 this was an operational issue, this was an
 11 operational issue and it was in that context
 12 and that context only that I made that
 13 reference. It was post this issue becoming
 14 public, and it was clearly understood by all
 15 that Eastern Health operationally was
 16 responding to this very serious issue.
 17 COFFEY, Q.C.:
 18 Q. But on December 5th you have a briefing notes,
 19 it's there as part of P-0124, in fact, it's
 20 right there on the screen now, somebody has
 21 carried over the question from November 7th,
 22 "How did this happen?" We know now, based
 23 upon the documentary evidence, that Exhibits
 24 P-0046 and P-0047, some period of time, weeks
 25 before December 5th had arrived in

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1 Newfoundland?
 2 MR. OTTENHEIMER:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. At Eastern Health. In fact the two external
 6 reviews are referenced on the second page of
 7 the December 5th briefing note, yet, there's
 8 no reference to what's in the reports, not at
 9 all. Now, can you give any explanation, can
 10 you offer any explanation as to why that's so?
 11 MR. OTTENHEIMER:
 12 A. As I mentioned earlier, it would have been
 13 troubling to me if information was being
 14 deliberately kept from me as the Minister of
 15 the day. It was my understanding at that time
 16 that a process and exercise had yet to be
 17 completed in its totality and I respected that
 18 particular point of view.
 19 COFFEY, Q.C.:
 20 Q. See, more than a month before that, on
 21 November 3rd, your ADM, Moira Hennessey, who
 22 you've described as, your understanding, from
 23 your perspective, is a diligent civil servant
 24 had asked both Dr. Williams and George Tilley,
 25 "Have those reports arrived, and if so, what

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1 are the findings?"

2 MR. OTTENHEIMER:

3 A. Um-hm.

4 COFFEY, Q.C.:

5 Q. Yet, more than a month later, on December 5th,

6 "How did this happen?" is there, in

7 anticipated questions, front and centre,

8 clearly, and there's no answer. So you're

9 saying to us, "Go speak to Moira, go speak to

10 John Abbott, whoever prepared those briefing

11 notes."?

12 MR. OTTENHEIMER:

13 A. What I'm saying, Mr. Coffey, with all due

14 respect, is that I had formulated the view

15 that a process had yet to be completed and

16 upon completion of that process, in its

17 entirety, as the Minister, I would anticipate

18 receipt of all information as it relates to

19 this issue.

20 COFFEY, Q.C.:

21 Q. See, Mr. Ottenheimer, November 3rd your ADM

22 had said, "What are the general findings?"

23 Now that's more than a month before December

24 5th, isn't it?

25 MR. OTTENHEIMER:

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1 A. That is correct. But it doesn't change, my

2 answer doesn't change.

3 COFFEY, Q.C.:

4 Q. But what I'm getting at is this, if she's

5 asking it, why wouldn't you ask it?

6 MR. OTTENHEIMER:

7 A. What I'm getting at, Mr. Coffey, and what I

8 have stated is that it was my belief that

9 there was work yet to be done.

10 COFFEY, Q.C.:

11 Q. Sure, why wouldn't you just ask to see what's

12 there?

13 MR. OTTENHEIMER:

14 A. Because the process has not been complete.

15 COFFEY, Q.C.:

16 Q. Well, sure, it hasn't been completed for Ms.

17 Hennessey, either. So the thing is is that

18 you're told on October 3rd the full reports

19 will be in in a few weeks. It is now two

20 months later, December 5th, the reports, we

21 know, are back in--are in Newfoundland.

22 You're telling us unspecified people, people

23 you cannot recall, lead you to believe or gave

24 you some information that lead you to conclude

25 I shouldn't ask for the reports at this point

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1 because I'm waiting the final process. Your

2 staff as posing that you're about to be

3 asked hard questions about this. I mean,

4 you'll acknowledge that, considering the e-

5 mail?

6 MR. OTTENHEIMER:

7 A. Clearly, clearly acknowledge that.

8 COFFEY, Q.C.:

9 Q. Yeah. And you, in fact, understood that you

10 might be asked hard questions?

11 MR. OTTENHEIMER:

12 A. I would certainly--that's certainly a

13 possibility, of course.

14 COFFEY, Q.C.:

15 Q. The reports are in town. Why not just simply

16 ask? You're saying -

17 MR. OTTENHEIMER:

18 A. I'm saying -

19 COFFEY, Q.C.:

20 Q. - you just didn't, and you're saying that "I

21 didn't because at some unspecified point in

22 the future the process would end."?

23 MR. OTTENHEIMER:

24 A. The process, the evaluation process that was

25 undertaken would end. There was an

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1 implementation phase, as I understood it, and

2 further analysis to be done and a final report

3 submitted to Eastern Health. And it was at

4 that point, Mr. Coffey, that I would

5 anticipate receipt of all information in its

6 totality.

7 COFFEY, Q.C.:

8 Q. Why not get it beforehand?

9 MR. OTTENHEIMER:

10 A. Because -

11 COFFEY, Q.C.:

12 Q. Mr. Ottenheimer, I can take you, if you wish,

13 and I can take you through point by point by

14 point where you are kept apprised as time goes

15 on about unfolding events.

16 MR. OTTENHEIMER:

17 A. Um-hm.

18 COFFEY, Q.C.:

19 Q. That's quite common as the Minister of Health?

20 MR. OTTENHEIMER:

21 A. Sure.

22 COFFEY, Q.C.:

23 Q. Isn't it?

24 MR. OTTENHEIMER:

25 A. Quite common.

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1 COFFEY, Q.C.:

2 Q. And yet, this is one exception here, this one

3 exception is you're going to wait to find out

4 what the result is until the end of the

5 process of this particular ER/PR?

6 MR. OTTENHEIMER:

7 A. On this issue I respected the view that there

8 was a process that had to be completed in its

9 entirety and -

10 COFFEY, Q.C.:

11 Q. Why?

12 MR. OTTENHEIMER:

13 A. - I accepted that.

14 COFFEY, Q.C.:

15 Q. But why?

16 MR. OTTENHEIMER:

17 A. I accepted that.

18 COFFEY, Q.C.:

19 Q. But why?

20 MR. OTTENHEIMER:

21 A. Because there was the implementation stage, a

22 further analysis and a final report to be

23 given.

24 COFFEY, Q.C.:

25 Q. But why wouldn't you want to know what

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1 happened, what they said in the beginning,

2 what Banerjee and Wegrynowski said?

3 MR. OTTENHEIMER:

4 A. Because that would be included in the

5 completed package upon completion of all

6 stages of this review.

7 COFFEY, Q.C.:

8 Q. Okay, so I want -

9 THE COMMISSIONER:

10 Q. I'm sorry, Mr. Coffey.

11 COFFEY, Q.C.:

12 Q. Sure, I'm sorry.

13 THE COMMISSIONER:

14 Q. But I had understood earlier, and I think I

15 now understand what you're saying, but you

16 seem to be saying this was a several step

17 process?

18 MR. OTTENHEIMER:

19 A. Correct.

20 THE COMMISSIONER:

21 Q. Okay. And the first step in that process

22 presumably was for these two experts who had

23 been engaged by Eastern Health to come to

24 Newfoundland, do their investigation and

25 determine what the problem was, make

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1 recommendations for how to deal with the

2 problem?

3 MR. OTTENHEIMER:

4 A. Um-hm.

5 THE COMMISSIONER:

6 Q. Which presumably Eastern Health would then

7 either accept or otherwise, but assuming for

8 the moment they accepted them. Then implement

9 them?

10 MR. OTTENHEIMER:

11 A. Um-hm.

12 THE COMMISSIONER:

13 Q. Was there another phase to the process?

14 MR. OTTENHEIMER:

15 A. It was my understanding, Madam Commissioner,

16 that after implementation there would be a

17 final report and review, I guess, as to how

18 the implementation stage was, in fact,

19 working. So there would be a final report

20 being submitted to Eastern Health that would,

21 it was certainly my belief that would have

22 incorporated all stages upon completion of the

23 exercise that had been requested from these

24 two individuals, one from British Columbia,

25 one from Toronto.

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1 THE COMMISSIONER:

2 Q. And back to what I understand to be the point

3 of Mr. Coffey's question, is that in the

4 context of that fall you anticipated, because

5 by now it was public -

6 MR. OTTENHEIMER:

7 A. Yes.

8 THE COMMISSIONER:

9 Q. That people would be saying to you, as

10 Minister of Health, "How could this happen?"

11 MR. OTTENHEIMER:

12 A. Um-hm.

13 THE COMMISSIONER:

14 Q. "What went wrong?"

15 MR. OTTENHEIMER:

16 A. Um-hm.

17 THE COMMISSIONER:

18 Q. And what were you going to say?

19 MR. OTTENHEIMER:

20 A. I would say, Madam Commissioner, that I have

21 not received that information, but I would

22 anticipate receipt of that information upon

23 completion of the review process that's been

24 undertaken.

25 THE COMMISSIONER:

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1 Q. So you were will to--that's the part that I'm
 2 having some difficulty with, frankly. Because
 3 it seems to me that the first question here is
 4 you would want the assurances, I'm quite sure,
 5 of Eastern Health, that it's never going to
 6 happen again.
 7 MR. OTTENHEIMER:
 8 A. Correct.
 9 THE COMMISSIONER:
 10 Q. And either we've accepted the reports or for
 11 this reason don't and we're doing this so that
 12 you can be assured that that's not going to be
 13 a problem. But I don't quite understand why
 14 it is you wouldn't want to know what they said
 15 the problem was.
 16 MR. OTTENHEIMER:
 17 A. Out of respect for a process, I guess, Madam
 18 Commissioner, that had yet to be completed.
 19 And I realize in one sense it's being
 20 conducted in a variety of stages but there was
 21 the implementation stage, presumably -
 22 THE COMMISSIONER:
 23 Q. But the implementation presumably would be
 24 this is how we fix it?
 25 MR. OTTENHEIMER:

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1 A. Or this is how we apply some of the
 2 recommendations as a result of the findings, I
 3 guess, by the two experts.
 4 THE COMMISSIONER:
 5 Q. Yeah.
 6 MR. OTTENHEIMER:
 7 A. And then the implementation stage and then a
 8 final review upon completion of the
 9 implementation stage. And it was always my
 10 view and belief that when that process was
 11 completed in its entirety, that I would
 12 receive that information.
 13 THE COMMISSIONER:
 14 Q. Oh, I understand that you had made that point.
 15 But I didn't quite--I'm still having
 16 difficulty on why you wouldn't want to know,
 17 as Minister of Health, up front that this is
 18 the problem?
 19 MR. OTTENHEIMER:
 20 A. I formed the view, Madam Commissioner, that
 21 there were other stages that had to be
 22 completed as part and parcel of this exercise
 23 and I wish to wait until the entire exercise
 24 had been completed.
 25 THE COMMISSIONER:

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1 Q. I'm sorry, Mr. Coffey, I interrupted you, but
 2 I -
 3 COFFEY, Q.C.:
 4 Q. No, thank you, Commissioner. So, in effect,
 5 then, you decided I don't want to know until
 6 it's over?
 7 MR. OTTENHEIMER:
 8 A. No, Mr. Coffey, that is not the case at all.
 9 COFFEY, Q.C.:
 10 Q. Well -
 11 MR. OTTENHEIMER:
 12 A. And as I mentioned, as I mentioned -
 13 COFFEY, Q.C.:
 14 Q. Mr. Ottenheimer, look, you knew it was going
 15 on, you just finished telling the Commissioner
 16 that?
 17 MR. OTTENHEIMER:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. You just finished telling her that I was going
 21 to wait until the end?
 22 MR. OTTENHEIMER:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. Meaning, presumably, or the inference is I

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1 don't want to know at the various steps, I
 2 don't want to be informed as it goes along? I
 3 mean, it's -
 4 MR. OTTENHEIMER:
 5 A. I have--no, no, I have difficulty, Mr. Coffey,
 6 with that, with framing the point or the
 7 question that way. It was obviously important
 8 to me as a public health issue that I have
 9 full awareness as to what happened with
 10 respect to our lab. I simply made and
 11 formulated the view that the process ought to
 12 complete a particular course of action, which
 13 included the findings, the implementation, and
 14 the final report.
 15 COFFEY, Q.C.:
 16 Q. When did you arrive at that decision?
 17 MR. OTTENHEIMER:
 18 A. I cannot be specific on that, Mr. Coffey.
 19 Obviously sometime during that fall. I don't
 20 know when.
 21 COFFEY, Q.C.:
 22 Q. Is it after the reports arrived in St. John's?
 23 MR. OTTENHEIMER:
 24 A. I simply don't know.
 25 COFFEY, Q.C.:

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1 Q. Well, when did you find out that this was
 2 going to be an ongoing process?
 3 MR. OTTENHEIMER:
 4 A. That was certainly an impression that was left
 5 with me during that fall. And again, I cannot
 6 be specific.
 7 COFFEY, Q.C.:
 8 Q. So the first recommendation sheet I believe is
 9 dated December 14th, 2005. It's a spread
 10 sheet with recommendations on it, okay?
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. Eastern Health itself didn't have a listing
 15 outside the reports before December 14th,
 16 2005.
 17 MR. OTTENHEIMER:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. So could it be around that time?
 21 MR. OTTENHEIMER:
 22 A. I simply do not recollect when that would be.
 23 COFFEY, Q.C.:
 24 Q. Okay. If we could, please, Exhibit 0310?
 25 Now, this is a series of e-mails. The one at

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1 the bottom of the page is, well, actually,
 2 it's a two page, but the ending of it is just
 3 something that Ms. Pennell has appended to
 4 most of her e-mails, a little expression. And
 5 she says, this is an e-mail from, an original
 6 message, which is right here, begins right
 7 there, from Deborah Thomas Pennell, and she's
 8 identified as being from the Health Care
 9 Corporation of St. John's, dated Thursday,
 10 December 1st, 2005 at 1357 hours. It's to
 11 Tansy Mundon on her Blackberry. The subject
 12 is "FYI" presuming is for your information.
 13 Says, "Hi Tansy, Just FYI, Mark Quinn is doing
 14 a news story on the fact that the ER/PR
 15 testing is taking longer than we thought.
 16 He's talking to Peter Dawe and cancer
 17 survivor," and there's a, the cancer survivor
 18 was named there. "And Dr. Williams also did a
 19 quick telephone interview. Basically all he
 20 said is that we are getting results back as
 21 fast as we can, that we have issued a plea to
 22 Mount Sinai that they do what they can to
 23 hurry the procedure along and that as soon as
 24 we get the results back we are letting people
 25 know. There's not much more we can say. Just

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1 wanted to keep you in the loop. I managed to
 2 hold him off until today, that way the issue
 3 should be dead again by the time the House
 4 opens again next week. J." And I don't know
 5 what the J means, but. And it's signed
 6 "Deborah, Deborah Thomas Pennell." So she is
 7 sending this to your Communications Director
 8 in the middle of the day on Thursday, December
 9 1st. And then there's an e-mail, hard to
 10 tell, but it involves Tansy Mundon and it
 11 says, "Heads up. Make sure the Minister
 12 knows." And it's hard to tell who exactly
 13 sent that. But if we look at the top of the
 14 page, there's an e-mail from Darrell Hynes,
 15 your Executive Assistant, to Tansy Mundon,
 16 Thursday, December 1st, 2005 at 3:10 p.m. The
 17 subject is "Re: FW, FYI." And Mr. Hynes
 18 writes, "He is with CBC Radio, right?" and
 19 signs it himself. And in the context here,
 20 because the only connection with Mr. Hynes,
 21 between Mr. Hynes and Ms. Mundon presumably
 22 occurs on the top of the page in the text,
 23 apparently Ms. Mundon had forwarded Deborah
 24 Pennell's e-mail to Darrell Hynes saying to
 25 him, "Heads up. Make sure the Minister

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1 knows," that's yourself. And Mr. Hynes, of
 2 course, replied to Ms. Mundon, I suppose, to
 3 identify that Mr. Quinn was with CBC Radio.
 4 Now, sir, in relation to this, you know, the
 5 idea that--well, first of all I'll ask you, do
 6 you recall if Mr. Hynes ever brought this to
 7 your attention?
 8 MR. OTTENHEIMER:
 9 A. I do not recall ever seeing this e-mail
 10 before, Mr. Coffey.
 11 COFFEY, Q.C.:
 12 Q. Not the e-mail, the subject matter.
 13 MR. OTTENHEIMER:
 14 A. Well, the subject matter.
 15 COFFEY, Q.C.:
 16 Q. To.
 17 MR. OTTENHEIMER:
 18 A. Not to my knowledge. But I certainly did not
 19 see this particular document before.
 20 COFFEY, Q.C.:
 21 Q. Ms. Pennell was with communications with
 22 Eastern Health, I gather, at the time frames
 23 that--to your director of communications,
 24 "That way the issue should be dead again by
 25 the time the House opens again next week."

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1 Did Ms. Mundon ever raise that sort of notion
 2 with you, "Look, we'll, you know, manoeuvre
 3 things so that the issue has died before the
 4 House opens," did Ms. Mundon ever raise that
 5 sort of notion or approach to you?
 6 MR. OTTENHEIMER:
 7 A. No, Mr. Coffey. And I can tell you the tone
 8 of this particular e-mail I find troubling,
 9 there's no question about that. The choice of
 10 language is unfortunate. And I have
 11 difficulty with this.
 12 COFFEY, Q.C.:
 13 Q. If I could just one moment, please,
 14 Commissioner, there's something I just want to
 15 locate.
 16 THE COMMISSIONER:
 17 Q. Coffey, we're getting near to the luncheon
 18 break, so do you want to locate your document
 19 after lunch?
 20 COFFEY, Q.C.:
 21 Q. Yes, if we could, please, and we'll begin just
 22 after lunch.
 23 THE COMMISSIONER:
 24 Q. I just, I have a few short questions myself
 25 which I'm going to just take advantage of a

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1 couple of minutes because I don't think it
 2 requires a long answer, Mr. Ottenheimer. In
 3 the--I remember on the last day you addressed
 4 the issue of whether or not the problem--when
 5 you were advised about the problem in the lab,
 6 whether it was a funding problem.
 7 MR. OTTENHEIMER:
 8 A. Um-hm.
 9 THE COMMISSIONER:
 10 Q. Can you tell me whether, over the course of
 11 the time that you were Minister of Health, you
 12 recall any discussion about systems problems
 13 within Eastern Health or, indeed, any other
 14 board, were people coming to you explaining
 15 the potential problems of the systems not
 16 being current, as it were, on being unable to
 17 organize their large amounts of information,
 18 keep track of documents, patients, testing,
 19 anything of that nature?
 20 MR. OTTENHEIMER:
 21 A. Um-hm. Not specifically, Madam Commissioner.
 22 But I think it's fair to say that there would
 23 have been a general concern of, as you put it,
 24 you know, systems information and information
 25 gathering, I guess, that that may perhaps have

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1 been a general concern of all our health care
 2 authorities. As it relates to resources,
 3 specifically, I do remember when I met with
 4 Mr. Tilley on day one asking him specifically
 5 if this issue that he was sharing with me for
 6 the first time, if resources, in other words,
 7 if money could help, is this a resource
 8 problem. I remember raising that question
 9 with him. It's in -
 10 THE COMMISSIONER:
 11 Q. My note from last week indicates that the
 12 response you got that, no, it wasn't a money
 13 issue?
 14 MR. OTTENHEIMER:
 15 A. That's correct, that was certainly the
 16 response that I received at that time. But as
 17 time goes on, for example, I received a letter
 18 from, at the time, Dr. Tom Costello, who was
 19 the president during my tenure as Minister of
 20 Health for that year, he was the president of
 21 the Newfoundland and Labrador Medical
 22 Association, raising the issue of pathologists
 23 just as an example. Now, clearly, as we now
 24 know, the direct link between pathology and
 25 pathologists and this very important ER/PR

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1 issue, but it may be an example, a direct
 2 example, in response to your question, Madam
 3 Commissioner, that that was an issue that was
 4 raised with me prior, just prior to my leaving
 5 the Department of Health and perhaps provides
 6 an example to your particular question.
 7 THE COMMISSIONER:
 8 Q. All right. Thank you, Mr. Ottenheimer.
 9 COFFEY, Q.C.:
 10 Q. I do, if I could, just one moment,
 11 Commissioner, if I could?
 12 THE COMMISSIONER:
 13 Q. Yes.
 14 COFFEY, Q.C.:
 15 Q. Because I've located it. It's P-0142 and it
 16 relates to the sentiment expressed in 0310 by
 17 Ms. Pennell expressing, down at Eastern
 18 Health, expressing it to your director of
 19 communications on December 1st, 2005 that the
 20 issue should be dead again by the time the
 21 House opens again next week. Because when we
 22 look at P-0142, and we saw this last Monday,
 23 this is the same Tansy Mundon who on October
 24 3rd, 2005, wrote to a number of people,
 25 including yourself, an e-mail and saying she--

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1 this is the one where Susan had apparently
 2 told her they feel "The horse has left the
 3 barn," in quotes, and she says, and this is
 4 Ms. Mundon speaking to yourself and all the
 5 senior management in your Department, as well
 6 as your EA, "I tend to agree with Susan this
 7 time. With the news release it seems as if
 8 the opportunity for news release to be issued
 9 in a proactive manner has passed." And goes
 10 on, "If we did issue a news release at this
 11 point, it will be picked up by local
 12 newspapers and will probably draw attention to
 13 the issue unnecessarily." And you told us
 14 last week how you felt about that. In
 15 relation to that, because apparently there's
 16 no sign that on December 1st that Ms. Mundon
 17 took any issue with Ms. Pennell's approach, or
 18 Ms. Thomas' approach, to trying to ensure the
 19 issue was dead by the time the House opened
 20 that week in December, I take it then that in
 21 October 3rd, 2005 and thereafter you didn't
 22 say anything to Ms. Mundon to correct this
 23 approach?
 24 MR. OTTENHEIMER:
 25 A. That is correct. I don't remember in any way

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1 taking her to task for the wording that's
 2 here, but I do remember, I believe in response
 3 to your question, Mr. Coffey, indicating that
 4 I had difficulty with the tone.
 5 COFFEY, Q.C.:
 6 Q. Oh, yeah, and I appreciate that. But you see,
 7 apparently two months later, effectively, in
 8 the same context, dealing with a reporter,
 9 Mark Quinn, and Darrell Hynes is on the
 10 October 3rd e-mail and he's on the December
 11 1st e-mail, Tansy Mundon is on both -
 12 MR. OTTENHEIMER:
 13 A. But she received the later one, didn't she?
 14 COFFEY, Q.C.:
 15 Q. Yes, she received it. But there's no
 16 reference back saying--and the forwarding
 17 message is, "Heads up. Make sure the Minister
 18 knows." Which presumably make sure the
 19 Minister knows that Mark Quinn is asking about
 20 this when you read the e-mail. You took no
 21 corrective action in October 3rd, 2005 vis-a-
 22 vis Ms. Mundon. Do you have any knowledge of
 23 anyone having done so?
 24 MR. OTTENHEIMER:
 25 A. Not to my knowledge on October 3rd. However,

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1 it's important to realize, because I know I
 2 can anticipate the question, I guess, that,
 3 you know, the e-mail that we're talking about
 4 in December was not forwarded by Ms. Mundon,
 5 it was received by her.
 6 COFFEY, Q.C.:
 7 Q. Yes. But -
 8 MR. OTTENHEIMER:
 9 A. Not, this was not her e-mail, she received it.
 10 And -
 11 COFFEY, Q.C.:
 12 Q. But she forwarded it to your executive
 13 assistant, Darrell Hynes?
 14 MR. OTTENHEIMER:
 15 A. It was forwarded to -
 16 COFFEY, Q.C.:
 17 Q. With the message.
 18 MR. OTTENHEIMER:
 19 A. Yeah, but it was -
 20 COFFEY, Q.C.:
 21 Q. "Heads up!", exclamation.
 22 MR. OTTENHEIMER:
 23 A. Yeah, but it was not, Mr. Coffey, it was not
 24 her e-mail, it was received by her. And I've
 25 indicated that the choice of language in that

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1 e-mail is clearly unfortunate. But this is
 2 not an e-mail that originated in the
 3 Department of Health and Community Services.
 4 COFFEY, Q.C.:
 5 Q. Can you explain why you didn't take any
 6 corrective action on October 3rd, 2005 or
 7 thereafter?
 8 MR. OTTENHEIMER:
 9 A. Because it was not, certainly I never felt
 10 that this was a view that was in any way
 11 symbolic of a view in the Department. On the
 12 contrary, this -
 13 COFFEY, Q.C.:
 14 Q. But it's your director of communication's
 15 view.
 16 MR. OTTENHEIMER:
 17 A. Mr. Coffey, on the contrary. This was a very
 18 difficult issue involving a number of
 19 individuals. I always believed that and I
 20 think my style in management was something
 21 that health matters are matters that are
 22 sensitive, they're personal, they have to be
 23 treated with a degree of respect, they have to
 24 be treated with a degree of, you know,
 25 personal respect throughout all stages of it.

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1 Ms. Mundon and, you know, I will be fair to
 2 her, I found Ms. Mundon to be an effective
 3 communications director. She replaced a much
 4 more experienced communications director in
 5 Carolyn Chaplin. I certainly did not find,
 6 during my relatively short tenure in the
 7 Department of Health and Community Services,
 8 when this issue was an issue for that eight-
 9 month period, I certainly did not find a view
 10 overall that Ms. Mundon displayed that showed
 11 a tendency for her to be insensitive on this
 12 very delicate topic. Clearly, and I will
 13 acknowledge that on the example that was shown
 14 to me last week, I have some difficulty with
 15 the language that is used there. But that was
 16 not an impression that was given to me
 17 throughout my time as Minister of Health and
 18 Community Services, and on the contrary, I
 19 found overall a sensitivity and a caring and a
 20 professionalism. Having said that, I
 21 acknowledge that that particular, and it's
 22 one, that particular e-mail has a choice of
 23 language which is certainly not something that
 24 we can be particular proud of. However,
 25 overall I found Ms. Mundon to competent and

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1 she, you know, I think demonstrated that
 2 ability throughout this very difficult time.
 3 COFFEY, Q.C.:
 4 Q. But that doesn't really explain why you didn't
 5 speak to her about it, does it?
 6 MR. OTTENHEIMER:
 7 A. I acknowledged last week when this issue came
 8 up that I did not speak to her about it. And
 9 I have not seen, the second e-mail that you're
 10 showing me today, Mr. Coffey, was not Tansy
 11 Mundon's e-mail. It was an e-mail that she
 12 received by somebody else.
 13 COFFEY, Q.C.:
 14 Q. And so you didn't see fit to speak to her on
 15 October 3rd about the e-mail and the tone?
 16 MR. OTTENHEIMER:
 17 A. I do not--I do not recall speaking to her in
 18 particular on that particular point.
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 MR. OTTENHEIMER:
 22 A. But the second e-mail, the one you're showing
 23 today, and it's important that, you know, we
 24 say that, it is not her e-mail.
 25 COFFEY, Q.C.:

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1 Q. Yeah.
 2 MR. OTTENHEIMER:
 3 A. She received it.
 4 COFFEY, Q.C.:
 5 Q. See, on that point if I could, Commissioner,
 6 see, back on October 3rd you knew that she was
 7 very new to the job and she had replaced
 8 Carolyn Chaplin, who you just pointed out is
 9 very experienced.
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. Tansy Mundon was effectively, in that job, new
 14 to it and almost green to it. And yet,
 15 despite having seen that e-mail on October 3rd
 16 emanating from her to all the senior
 17 management in that Department, with the
 18 expression in it about trying to avoid media
 19 coverage, minimize media coverage of this
 20 issue, knowing that she was new to the
 21 Department, knowing that she was new to you
 22 and your style, you choose not to speak to
 23 her, to correct her?
 24 MR. OTTENHEIMER:
 25 A. I did not in any way reprimand her at that

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1 point. But to my knowledge, to my knowledge,
 2 unless there's information that I'm not aware
 3 of, that sort of language was never repeated
 4 and that sort of insensitivity did not repeat
 5 itself as it relates to any information that
 6 may have been forthcoming from her office, to
 7 the best of my knowledge.
 8 COFFEY, Q.C.:
 9 Q. Thank you, Commissioner.
 10 THE COMMISSIONER:
 11 Q. We're somewhat late taking the luncheon break,
 12 so why don't we make it at 2:10? Thank you.
 13 (ADJOURNED FOR LUNCH)
 14 THE COMMISSIONER:
 15 Q. Mr. Coffey.
 16 COFFEY, Q.C.:
 17 Q. Thank you, Commissioner. Registrar, Exhibit
 18 P-0307, please? Mr. Ottenheimer, this is an
 19 e-mail from John Abbott, your Deputy Minister,
 20 to Josephine Cheeseman dated October 14th,
 21 2005 at 3:10:59 p.m. It's subject is "Re:
 22 Items for retreat." And it was sent in
 23 response, apparently, to an e-mail of earlier
 24 that morning, which is at the bottom of the
 25 page, or bottom of the text, Josephine had

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1 gone to John Abbott and said, "When you get a
 2 chance," at 10:02 that morning, "When you get
 3 a chance, let me know what issue/topic you
 4 would like raised at the communications
 5 retreat next week. Thanks, Josephine." But
 6 Mr. Abbott, your DM, on October 14 goes back
 7 to her and says, "This issues around
 8 communications related to patient safety
 9 issues, eg, current ER/PR breast cancer
 10 testing, is there an established protocol as
 11 to when patients and the media are informed?
 12 What is the relationship between the
 13 Department and the RIHAS when these issues
 14 arise, etcetera? Carolyn will be able to help
 15 on this question." Now, who is Josephine
 16 Cheeseman, do you know?
 17 MR. OTTENHEIMER:
 18 A. Ms. Cheeseman works in the communications
 19 branch of Executive Council.
 20 COFFEY, Q.C.:
 21 Q. And the idea of a communications retreat
 22 involving personnel from your department, for
 23 example, the Deputy Minister, John Abbott, do
 24 you know if--are you familiar with that idea,
 25 first of all?

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1 MR. OTTENHEIMER:
 2 A. No, I'm not, Mr. Coffey.
 3 COFFEY, Q.C.:
 4 Q. Okay. So I take it then that in October of
 5 2005 or November, December, 2005 did Mr.
 6 Abbott ever raise with you, you know, the
 7 matter referred to in the text of his e-mail
 8 to Ms. Cheeseman, not so much the retreat as,
 9 as the issue of whether there was an
 10 established protocol as to when patients and
 11 media are informed what the relationship was
 12 between the Department and the RIHAS, when
 13 these issues arise?
 14 MR. OTTENHEIMER:
 15 A. In terms of an established protocol, no.
 16 COFFEY, Q.C.:
 17 Q. The absence of an established protocol, was
 18 that ever discussed with you?
 19 MR. OTTENHEIMER:
 20 A. Not, not directly. I guess certainly
 21 indirectly from the point of view of
 22 discussions that I would have had earlier with
 23 representatives of Eastern Health, and that
 24 would have been, again, not in the sense of an
 25 established protocol and prescribed

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1 directives, but more just in a general
 2 discussion.
 3 COFFEY, Q.C.:
 4 Q. And what about the issue--you've explained
 5 that, you know, the summer, what you were told
 6 in the summer of '05 and as it evolved.
 7 MR. OTTENHEIMER:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. What about the issue of the relationship
 11 between the Department and RIHAS, which would
 12 be the Regional Integrated Health Authorities,
 13 when these issues arise, etcetera? Mr. Abbott
 14 is asking here or posing the question, "What
 15 is the relationship between the Department,"
 16 that would be your Department, "and the RIHAS
 17 when such issues arise?" Did he ever raise
 18 with you that matter, like, in other words,
 19 "Mr. Ottenheimer, how do we--what's the
 20 appropriate way for us to be dealing with the
 21 RIHAS, us, the Department?" Did that come up?
 22 MR. OTTENHEIMER:
 23 A. Not specifically, as I recall.
 24 COFFEY, Q.C.:
 25 Q. Okay. Now, the Carolyn there, by this point

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1 in time, that is, October 14th, 2005, I think
 2 the record will show Ms., in fact, it has
 3 shown that Tansy Mundon had replaced Carolyn
 4 by that point?
 5 MR. OTTENHEIMER:
 6 A. Um-hm.
 7 COFFEY, Q.C.:
 8 Q. And if we could go to Exhibit P-0313, please?
 9 Now, this is an e-mail, this is one of those
 10 e-mails that apparently Mr. Thompson found
 11 last Friday that, and forwarded to the
 12 Commission--not last Friday, I'm sorry, last
 13 Monday, late last Monday night, forwarded to
 14 myself and Ms. Chaytor. This is an e-mail
 15 from Carolyn Chaplin dated Friday, September
 16 30th, 2005 at 4:42 p.m. to a number of
 17 individuals, Bruce Cooper, Elizabeth Matthews,
 18 Josephine Cheeseman, Robert Thompson and
 19 Sherry McDonald. It's carboned to, carbon
 20 copied to Tansy Mundon, your Director of
 21 Communications. The subject is a "Heads up.
 22 Eastern Health Issue." The importance is
 23 "High". And Ms. Chaplin writes, "Eastern
 24 Health Authority has contacted us to advise
 25 that an issue that had been ongoing throughout

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1 the summer concerning ER/PR testing of breast
 2 cancer patients is about to hit the media.
 3 Late this afternoon Eastern Health was
 4 contacted by Independent inquiring whether the
 5 Health Authority had an issue with its
 6 mammogram screening. Dr. Kara Laing,
 7 Oncologist, spoke with the Independent to
 8 respond in addition. In addition, NTV, Lynn
 9 Burry, contacted the Authority at 4:15 this
 10 afternoon. Eastern Health will be calling NTV
 11 back, but given the late hour of the day it
 12 won't be possible for them to get a body for
 13 the clip tonight. They are going to offer
 14 comment for Monday's news." Signed, "Carolyn
 15 Chaplin." Now, she's indicated here to be the
 16 Director of Communications with the
 17 Communications and Consultations Branch of
 18 Executive Council. So I presume that's where
 19 she had gone from your Department. The
 20 question I have here is this, for you, is this
 21 is apparently a communication by her from the
 22 Communications and Consultation Branch to
 23 your, amongst other people, your Director of
 24 Communications.
 25 MR. OTTENHEIMER:

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1 A. Um-hm.
 2 COFFEY, Q.C.:
 3 Q. Your department is Tansy Mundon?
 4 MR. OTTENHEIMER:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. Late on September 30th, 2005, which is two
 8 days before the story broke in the media?
 9 MR. OTTENHEIMER:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. I ask you to think back to September 30th,
 13 that Friday of 2005. And this appears--
 14 suggests that the Communication and
 15 Consultations Branch was, in effect, telling
 16 the Department of Health that this was about
 17 to go public because apparently the Eastern
 18 Health Authority has contacted us, which would
 19 be Communications and Consultation Branch,
 20 Carolyn Chaplin, et al, to advise them that
 21 this was going to go public, so they went,
 22 apparently, Eastern Health went directly to
 23 the Executive Council, who then advised your
 24 Department of this. This is what this appears
 25 to suggest. If that was, in fact, what

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1 happened, would that surprise you?
 2 MR. OTTENHEIMER:
 3 A. That Eastern Health, your question is
 4 specifically that Eastern Health would contact
 5 Executive Council prior to the Department?
 6 COFFEY, Q.C.:
 7 Q. Yes, yeah. I'm not saying that that happened,
 8 but that's what this appears to suggest.
 9 MR. OTTENHEIMER:
 10 A. Yes, yeah. And as I say, it's difficult to,
 11 from this, to know exactly what the sequence
 12 of events would be.
 13 COFFEY, Q.C.:
 14 Q. Sure.
 15 MR. OTTENHEIMER:
 16 A. That would seem somewhat unusual.
 17 COFFEY, Q.C.:
 18 Q. Okay. Now, in the meantime, because Carolyn
 19 Chaplin had left your Department in August,
 20 2005 and was up with the Communications and
 21 Consultation Branch throughout September, I
 22 gather, and October and so on, what, if any,
 23 communication was going on during August and
 24 September and October of--well, August and
 25 September, up to October 2nd, 2005 between

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1 your Department and the Executive Council
 2 about ER/PR?
 3 MR. OTTENHEIMER:
 4 A. That question, again, would be best asked of
 5 Ms. Mundon, who--or Ms. Chaplin, because
 6 they're both there during that period of time.
 7 I wouldn't be in a position, Mr. Coffey, to
 8 answer that.
 9 COFFEY, Q.C.:
 10 Q. Okay. When we look at Exhibit P-0312, page 1
 11 of that is the 10:32 a.m. e-mail from Gary
 12 Cake to Robert Thompson, the heads up e-mail,
 13 as I refer to it, and that certainly
 14 apparently got Mr. Thompson's attention
 15 because we've looked at him forwarding it to
 16 Mr. Crawley and responding to Mr. Cake with
 17 specific operational instructions involving
 18 what should, at least the minimum of what
 19 should go in the com plan, and we have the
 20 2:37 p.m. stand down e-mail from Carolyn
 21 Chaplin. But Carolyn Chaplin's e-mail does go
 22 on to say, at 237, "Will be in a better
 23 position to forward--"We have arranged a
 24 briefing with the Health Authority for the
 25 latter part of this week," which would be 21st

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1 or 22nd of July, "and will be in a better
 2 position to forward relevant briefing
 3 materials at that time." That would be
 4 presumably forward relevant briefing materials
 5 to the Executive Council or Cabinet
 6 Secretariat?
 7 MR. OTTENHEIMER:
 8 A. Presumably, yes.
 9 COFFEY, Q.C.:
 10 Q. That's what that seems to suggest. And do you
 11 know what, if any, briefing notes or other
 12 communications--who's responsible for getting
 13 the briefing notes, then, up to the Cabinet
 14 Secretariat?
 15 MR. OTTENHEIMER:
 16 A. It could be the Director of Communications for
 17 the Department, possibly the Deputy Minister,
 18 but I would think the Director of
 19 Communications.
 20 COFFEY, Q.C.:
 21 Q. And would you have expected, in light of, even
 22 in light of the stand down, as it were, 237 e-
 23 mail, would you have expected that the Cabinet
 24 Secretariat would then still follow this,
 25 having been advised that there was 1200 to

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1 1500 patients whose test results may have been
 2 incorrect, would you have expected the -
 3 MR. OTTENHEIMER:
 4 A. I would think they would be guided by the
 5 opinion and the information as provided by the
 6 Department.
 7 COFFEY, Q.C.:
 8 Q. To the Cabinet Secretariat?
 9 MR. OTTENHEIMER:
 10 A. Yes. As provided by the Department to the
 11 Cabinet Secretariat.
 12 COFFEY, Q.C.:
 13 Q. Yes. There doesn't seem to be a whole lot of
 14 written material, if any, okay, so -
 15 MR. OTTENHEIMER:
 16 A. But there may have been other discussions,
 17 telephone discussions, for example, that we're
 18 not aware of.
 19 COFFEY, Q.C.:
 20 Q. If we could, please, Commissioner, P-0124?
 21 And now this, if you look at page 1 of it,
 22 it's entitled "Department of Health and
 23 Community Services briefing notes, 2005." And
 24 it begins with the one of September 30th, 2005
 25 and the October 3rd, October 5, November 7 and

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1 December 5th briefing notes are listed there.
 2 But we have seen the July 20th, 2005 briefing
 3 note, we looked at that last Monday and today.
 4 Do you know if that July 20th, '05 briefing
 5 note ever made it up to the Cabinet
 6 Secretariat?
 7 MR. OTTENHEIMER:
 8 A. I can't say with certainty, Mr. Coffey.
 9 COFFEY, Q.C.:
 10 Q. Do you have any reason to believe that it did?
 11 MR. OTTENHEIMER:
 12 A. As I say, I can't--based on the reference in
 13 one of the e-mails that you just showed in
 14 terms of briefing materials.
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 MR. OTTENHEIMER:
 18 A. I mean, that's quite possible. But I can't
 19 say with certainty.
 20 COFFEY, Q.C.:
 21 Q. So being in mind what Carolyn's e-mail, the
 22 stand down e-mail said, that briefing
 23 materials will be along later this week and we
 24 will, you know, we will be, we, the
 25 Department, will be in a position to forward

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1 it to the Cabinet Secretariat.
 2 MR. OTTENHEIMER:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. When you got that at that meeting on Thursday,
 6 July 21, did you expect that that would find
 7 its way up to the Cabinet Secretariat.
 8 MR. OTTENHEIMER:
 9 A. Could you -
 10 COFFEY, Q.C.:
 11 Q. The July 20th. The July 20th, that three page
 12 one.
 13 MR. OTTENHEIMER:
 14 A. Right.
 15 COFFEY, Q.C.:
 16 Q. You have it there.
 17 MR. OTTENHEIMER:
 18 A. Yeah.
 19 COFFEY, Q.C.:
 20 Q. Would you have expected that bearing in mind
 21 who was at that meeting and the fact that it
 22 was your first formal briefing, would you have
 23 expected that that would end up or a copy of
 24 it end up in Cabinet Secretariat?
 25 MR. OTTENHEIMER:

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1 A. In view--I say this now having had the benefit
 2 of seeing the e-mail.
 3 COFFEY, Q.C.:
 4 Q. Sure. And that's what I'm asking you about.
 5 MR. OTTENHEIMER:
 6 A. Which, of course, I didn't have the benefit of
 7 seeing the e-mail until two days ago.
 8 COFFEY, Q.C.:
 9 Q. Yeah.
 10 MR. OTTENHEIMER:
 11 A. So I've seen the e-mail for the first time.
 12 So the--you know, I think it's fair to say
 13 that in view of the wording of the e-mail that
 14 one would expect that this would make it to
 15 that office. But again, I don't know for sure
 16 if that happened.
 17 COFFEY, Q.C.:
 18 Q. If you could, please, Exhibit--just a moment,
 19 please, Commissioner. Exhibit P-0311, please?
 20 If you look at just page 2 of that, please?
 21 This is an e-mail from Tansy Mundon to a
 22 number of people, John Abbott, Deborah Thomas
 23 at Eastern Health, Tara Furlong, Moira
 24 Hennessey, Darrell Hynes, John Ottenheimer,
 25 John Rumboldt and Susan Bonnell. And it's

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1 dated December 5, 2005 at 11:39 a.m. The
 2 subject is "Forward: Cancer Society says wait
 3 for results could have been shorter." And
 4 down below the, what appears to be probably an
 5 internet posted story. I'm sorry, this is a
 6 transcript, it's not a story. It's pursuant
 7 to a standing order for an interview Jeff
 8 Gilhooly apparently conducted December 5, 2005
 9 with Peter Dawe at 7:10 a.m. that Monday
 10 morning. So I take it that in early December
 11 2005, particularly like on a Monday morning,
 12 the House is opened that day or the next, it
 13 wouldn't be at all unusual for Tansy to be
 14 sending transcripts of what's going on in the
 15 media to yourself about ER/PR?
 16 MR. OTTENHEIMER:
 17 A. That would be the normal course of events, but
 18 it wouldn't be restricted to ER/PR, it would
 19 be--I would get a folder on my desk almost on
 20 a daily basis of media reports, whether it be
 21 radio transcript, T.V. transcript, clippings
 22 from the daily newspapers and the weekly
 23 newspapers in Newfoundland and Labrador, that
 24 would be quite common.
 25 COFFEY, Q.C.:

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1 Q. Now there are certain sentiments expressed by
 2 Mr. Dawe during this interview and effectively
 3 he's communicating to the public through the
 4 auspices of CBC and Jeff Gilhooly that the
 5 Canadian Cancer Society, Newfoundland branch
 6 is not very happy with the way Eastern Health
 7 is handling this. And if you look through
 8 that, is that fair to say? Just go ahead and
 9 have a look.
 10 MR. OTTENHEIMER:
 11 A. I just see one page here.
 12 COFFEY, Q.C.:
 13 Q. Oh, I'm sorry, you can scroll down, I'm sorry,
 14 Mr. Ottenheimer, I apologize. You have
 15 control with the mouse now.
 16 MR. OTTENHEIMER:
 17 A. I think that's fair to say, Mr. Coffey, that's
 18 the sense of the discussion, yes.
 19 COFFEY, Q.C.:
 20 Q. Now sir, you have--at the time you had a
 21 parliamentary--what's it called, parliamentary
 22 -
 23 MR. OTTENHEIMER:
 24 A. Parliamentary secretary.
 25 COFFEY, Q.C.:

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1 Q. Secretary. That would be Mr. Ross Wiseman?
 2 MR. OTTENHEIMER:
 3 A. Correct.
 4 COFFEY, Q.C.:
 5 Q. And Mr. Ross Wiseman's role was what, vis-a-
 6 vis yourself?
 7 MR. OTTENHEIMER:
 8 A. You know, it could vary, of assistance in the
 9 House of Assembly from time to time. He would
 10 often represent the department, perhaps
 11 represent myself at public functions or
 12 various speaking engagements. I know one
 13 particular project that I had asked him to
 14 lead with the new aging initiative that we
 15 embarked upon in the department. And I asked
 16 Mr. Wiseman in his role as parliamentary
 17 secretary that day to assume leadership of
 18 that project, in terms of setting up the
 19 project and working with the different regions
 20 throughout the province. So it was, I guess,
 21 of assistance to the Minister in what is
 22 clearly recognized as a particularly large
 23 department.
 24 COFFEY, Q.C.:
 25 Q. Did you ever ask him, that you recall, to do

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1 anything with respect to ER/PR?

2 MR. OTTENHEIMER:

3 A. Not to my knowledge. I do not recall Mr.

4 Wiseman being a part of the meetings because--

5 and the reason I say that largely is because

6 we have a list of those individuals who are at

7 most of the meetings that took place with

8 Eastern Health and I don't recall Mr. Wiseman

9 attending those meetings. In terms of a

10 briefing with departmental officials, I mean,

11 it is possible. Mr. Wiseman may have sat in,

12 but I don't particularly recall.

13 COFFEY, Q.C.:

14 Q. And you don't recall you asking him to do

15 anything for you in this regard?

16 MR. OTTENHEIMER:

17 A. On the ER/PR question?

18 COFFEY, Q.C.:

19 Q. ER/PR question.

20 MR. OTTENHEIMER:

21 A. No.

22 COFFEY, Q.C.:

23 Q. Are you asking, you know, him indirectly, like

24 through one of your officials to contact him

25 to do something?

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1 MR. OTTENHEIMER:

2 A. On the ER/PR issue?

3 COFFEY, Q.C.:

4 Q. Yes, ER/PR issue.

5 MR. OTTENHEIMER:

6 A. Not that I recall.

7 COFFEY, Q.C.:

8 Q. If we could, please, Exhibit P-0165. Just

9 going to go to the second page of this. The

10 first page of that is a letter involving your

11 successor, Mr. Osborne, but the second page,

12 page two of P-0165, it's dated February 1st,

13 2006, it's from the Canadian Association of

14 Pathologists. In this context, there's a cc

15 here, EH, that would be Ed Hunt?

16 MR. OTTENHEIMER:

17 A. Correct.

18 COFFEY, Q.C.:

19 Q. And it's addressed to yourself as Minister of

20 Health and it says, "Re: Laboratory Medicine

21 Specialist (Pathologists) in Newfoundland."

22 Now, Commissioner, if I recall correctly, this

23 is one of the exhibits that showed up--just to

24 let you know, Commissioner, yes, we did have

25 exhibits delivered to us by Mr. Pritchard,

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1 counsel for the Department of Health,

2 Newfoundland government in this. He delivered

3 certain exhibits to us yesterday and this is,

4 in fact, just to let you know, and the others

5 present, this is one of them. So, Mr.

6 Ottenheimer -

7 THE COMMISSIONER:

8 Q. Is that your recollection? Mr. Pritchard, you

9 have a quizzical look on your face.

10 MR. PRITCHARD:

11 Q. Oh no, I'm not to question that, I did bring

12 them myself. I just might add to the record

13 that they emanated from the searches that were

14 done last week.

15 THE COMMISSIONER:

16 Q. All right, thank you.

17 COFFEY, Q.C.:

18 Q. Now, sir, this is--the letter is signed by

19 Diponkar Banerjee, President, and I presume

20 he's the president of the Canadian Association

21 of Pathologists. He apparently holds the

22 following positions, he's clinical professor

23 of pathology and laboratory medicine,

24 University of British Columbia; program

25 leader, Cancer Pathology; he's the director of

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1 pathology on Laboratory Medicine at the

2 British Columbia Cancer Agency. And this is

3 stamped "received" by your office on February

4 9th, 2006, and you were still minister at the

5 time. Now, do you recall this? Let you have

6 a look at it, well first of all, Dr. Banerjee

7 presumably is the same Dr. Banerjee as is in

8 those reports or the report that we looked at

9 this morning?

10 MR. OTTENHEIMER:

11 A. I'm assuming that.

12 COFFEY, Q.C.:

13 Q. The first paragraph he points out, "Eighty

14 percent of all medical decisions are based on

15 laboratory reports issued by pathologists, yet

16 pathology services usually cost less than five

17 percent of the health care budget in most

18 jurisdictions. We are facing severe and

19 growing pathologist manpower shortage across

20 the country and Newfoundland is likely to face

21 a crisis very soon as other provinces are

22 improving the compensation of pathologists in

23 order to attract more manpower.

24 Unless you are prepared to address, in

25 the immediate future, the fact that

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1 pathologists in your province are amongst the
 2 lowest paid professionals in the nation,
 3 please do not be surprised if your province
 4 experiences even greater difficulty in
 5 attracting and retaining pathologists than you
 6 face now. Not addressing this is false
 7 economy, as patient care will be adversely
 8 affected by the lack of high quality
 9 pathologists in the province. You have
 10 already experienced a recent example of the
 11 effects of not investing in high quality
 12 pathology when the errors in breast cancer
 13 estrogen receptor status were discovered,
 14 affecting hundred of patients in your
 15 province.
 16 Historically your province has relied
 17 heavily on foreign-trained pathologists who
 18 are unlikely to stay on in the province as
 19 more attractive jobs come up elsewhere in the
 20 nation. Please break this cycle by promoting
 21 and protecting your best assets who have such
 22 a profound influence on the quality of patient
 23 care." Now, do you recall receiving this?
 24 MR. OTTENHEIMER:
 25 A. No, I don't, Mr. Coffey and that doesn't

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1 strike me as unusual. Very often when
 2 correspondence would come into the department,
 3 it would be routed very often to the Deputy or
 4 one of the Assistance Deputy Ministers, which
 5 is apparently what happened in this case.
 6 However, I do recall and you may get to this,
 7 I do recall another piece of correspondence
 8 that I did receive on the issue of
 9 pathologists.
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. OTTENHEIMER:
 13 A. And that was from the Newfoundland and
 14 Labrador Medical Association and that was
 15 approximately two weeks before that, but in
 16 answer to your question specifically, on this
 17 piece of correspondence, I do not recall
 18 seeing it and in fact, as you pointed out, the
 19 response to this correspondence was signed off
 20 by my successor in the department, because I
 21 had left the Department of Health just over a
 22 month after--just approximately a month upon
 23 receipt of this correspondence.
 24 COFFEY, Q.C.:
 25 Q. Sure. And while you were still Minister of

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1 Health, the fact that Dr. Banerjee had written
 2 to you in your capacity as Minister of Health
 3 and said this about--what he does in this
 4 letter about pathologists or pay rates, the
 5 connection he makes between, "you have already
 6 experienced a recent example of the effects of
 7 not investing in high quality of pathology
 8 when the errors in breast cancer estrogen
 9 receptor status were discovered, affecting
 10 hundred of patients in your province." So
 11 that was never brought to your attention while
 12 you were still Minister?
 13 MR. OTTENHEIMER:
 14 A. That correspondence was not and I truly do not
 15 recall that discussion taking place.
 16 COFFEY, Q.C.:
 17 Q. Now the EH is Ed Hunt, he's an ADM or in
 18 effect an ADM.
 19 MR. OTTENHEIMER:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. What was his title, do you recall?
 23 MR. OTTENHEIMER:
 24 A. Director of Medical Services, maybe, or
 25 something like that.

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1 COFFEY, Q.C.:
 2 Q. And I take it, but he was the equivalent of an
 3 Assistant Deputy Minister?
 4 MR. OTTENHEIMER:
 5 A. Yes, he was, uh-hm.
 6 COFFEY, Q.C.:
 7 Q. And his job was to do what? His role?
 8 MR. OTTENHEIMER:
 9 A. Basically he is certainly part of the
 10 executive team within the department and would
 11 report, presumably directly to the Deputy
 12 Minister of the department.
 13 COFFEY, Q.C.:
 14 Q. But report on what, what sorts of things?
 15 MR. OTTENHEIMER:
 16 A. Issues revolving around obviously his
 17 division, Dr. Hunt worked outside the
 18 department, he worked down in the Belvedere -
 19 COFFEY, Q.C.:
 20 Q. The Belvedere building, yes.
 21 MR. OTTENHEIMER:
 22 A. Correct, where a number of officials--and
 23 employees within the department would work,
 24 and from time to time, Dr. Hunt would come to
 25 meetings with me in the Department of Health

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1 on issues, for example, around doctor
 2 services, doctor shortages, you know, if there
 3 were a physician issue in particular, very
 4 often Dr. Hunt would be present.
 5 COFFEY, Q.C.:
 6 Q. And what kind of expertise did he bring to the
 7 table, from your perspective?
 8 MR. OTTENHEIMER:
 9 A. From my perspective he was, I believe, a
 10 general practitioner, had practised in general
 11 medicine for a number of years in rural parts
 12 of Newfoundland and Labrador and the past
 13 number of years worked in the capacity as ADM
 14 in the Department of Health.
 15 COFFEY, Q.C.:
 16 Q. Now in February of 2006, were you aware that
 17 the Chief Pathologist for the BC Cancer Clinic
 18 and his title is referred to in your briefing
 19 notes for that fall.
 20 MR. OTTENHEIMER:
 21 A. Uh-hm.
 22 COFFEY, Q.C.:
 23 Q. That his name was Banerjee?
 24 MR. OTTENHEIMER:
 25 A. No, I was not.

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1 COFFEY, Q.C.:
 2 Q. If anyone recognized the connection between
 3 the author of this letter, his name, Dr.
 4 Banerjee and being the Director of Pathology
 5 and Laboratory Medicine with the British
 6 Columbia Cancer Agency and made the connection
 7 there between that and the author of the
 8 October 17th, 2005 review of the lab here in
 9 St. John's, would you have expected them to
 10 bring that fact to your attention?
 11 MR. OTTENHEIMER:
 12 A. I think that's a fair comment, if in fact it
 13 were known who the authors of those reports
 14 were.
 15 COFFEY, Q.C.:
 16 Q. Sure. And in terms of that second paragraph,
 17 last full sentence, the assertion by the
 18 president of the Canadian Association of
 19 Pathologists that you, meaning the ministry
 20 here in Newfoundland, Newfoundland and
 21 Labrador in general, "You have already
 22 experienced a recent example of the effects of
 23 not investing in high quality pathology when
 24 the errors in breast cancer estrogen receptor
 25 status were discovered, affecting hundred of

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1 patients in your province." I mean, even if
 2 one did not know that Dr. Banerjee authored
 3 the October 17th report, when the president of
 4 the Canadian Association of Pathologists
 5 writes this sort of a letter to the Minister
 6 of Health -
 7 MR. OTTENHEIMER:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. - and purports to have some kind of inside
 11 knowledge as to why the errors had occurred
 12 or, I shouldn't say errors because he doesn't
 13 use that word--no, he does use that word,
 14 "when the errors in breast cancer estrogen
 15 receptor status were discovered", wouldn't you
 16 have expected that to be brought to your
 17 attention? I mean, when Dr. Hunt got this,
 18 well how does this guy know this?
 19 MR. OTTENHEIMER:
 20 A. Well, no, I agree, I think that the reference
 21 and the wording of that letter is such that it
 22 suggests more than just investing in
 23 pathologists and in the area of pathology in
 24 the province. There's certainly more to it
 25 than just that.

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1 COFFEY, Q.C.:
 2 Q. Sure. It suggests that the author has some
 3 kind of detailed or perhaps inside knowledge
 4 of -
 5 MR. OTTENHEIMER:
 6 A. Information, sure.
 7 COFFEY, Q.C.:
 8 Q. In fact, that was, you know, based upon what
 9 you've told us, you know, last Monday and
 10 today, in fact that last three sentences were
 11 more than you knew--not three sentences, three
 12 lines in the second paragraph.
 13 MR. OTTENHEIMER:
 14 A. That is correct.
 15 COFFEY, Q.C.:
 16 Q. Sir, at the time, I appreciate you did move on
 17 to another portfolio in March of 2006, had it
 18 been known generally in the department in
 19 February 2006 that you were about to move?
 20 MR. OTTENHEIMER:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Okay, and so you became aware of the move
 24 when?
 25 MR. OTTENHEIMER:

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1 A. That decision that I made was essentially the
 2 day before, let's see, the 13th was my last
 3 day in the department. I believe I had spoken
 4 with the Premier's office maybe the morning of
 5 that day.
 6 COFFEY, Q.C.:
 7 Q. I'm only asking in the context of trying to
 8 figure out, well a person might say to
 9 themselves, well I don't want to burden Mr.
 10 Ottenheimer with this.
 11 MR. OTTENHEIMER:
 12 A. No, no, my decision to, you know, move -
 13 COFFEY, Q.C.:
 14 Q. Up until the day or so before you left.
 15 MR. OTTENHEIMER:
 16 A. Essentially, within a day or so.
 17 COFFEY, Q.C.:
 18 Q. You were full speed ahead as Minister?
 19 MR. OTTENHEIMER:
 20 A. Correct.
 21 THE COMMISSIONER:
 22 Q. Which would have been about four days after
 23 this letter was marked "received"?
 24 COFFEY, Q.C.:
 25 Q. No, it's actually March 9th, he left,

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1 Commissioner.
 2 THE COMMISSIONER:
 3 Q. Oh, I'm sorry, I thought you were saying you
 4 left in February.
 5 COFFEY, Q.C.:
 6 Q. No, it's March.
 7 THE COMMISSIONER:
 8 Q. Thank you. March, what date, the 13th?
 9 MR. OTTENHEIMER:
 10 A. My last day in the department was March 13th.
 11 THE COMMISSIONER:
 12 Q. Thank you.
 13 COFFEY, Q.C.:
 14 Q. If we could please, Exhibit P-0125? P-0125 is
 15 the briefing notes for 2006 for the Department
 16 of Health and Community Services and some
 17 related documentation, but Mr. Ottenheimer,
 18 you did this morning refer to the February '06
 19 briefing note, which you indicated you had
 20 seen, that's at pages three and four of P--
 21 0125 and the issue is framed here and if I
 22 could get some sense of who wrote it, it's
 23 written by a Debbie Morris and approved by
 24 Moira Hennessey, February 23rd, 2006. Who is
 25 Debbie Morris?

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1 MR. OTTENHEIMER:
 2 A. Presumably worked with--I cannot say with
 3 absolute certainly what her position was at
 4 that time, but presumably worked with Ms.
 5 Hennessey in that area, but I cannot be
 6 certain about that.
 7 COFFEY, Q.C.:
 8 Q. Now, sir, here under "Issue" it's framed as,
 9 well the title is "Retesting of Breast Cancer
 10 Patients." The issue is breast cancer
 11 patients are still looking for answers, some
 12 patients may have missed out on the drug
 13 therapy, Tomoxifen, that lowers the risk of
 14 the cancer recurring. Some patients say it is
 15 hard to find out whether their results are
 16 right or not. The public is concerned that
 17 not all samples have been retested by Mount
 18 Sinai to date." And the anticipated questions
 19 are set out there. "Has the testing been
 20 completed on the samples sent to Mount Sinai?
 21 Has everyone been notified of the results?"
 22 And the third bullet is "What has been done to
 23 correct this problem?" Now the one question
 24 that had been repeated in the November 7th,
 25 2005 briefing notes was "How did this happen?"

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1 has dropped out of the anticipated questions.
 2 Do you know how that came about?
 3 MR. OTTENHEIMER:
 4 A. No, but there is, the question may not be
 5 there, but there appears to be an answer.
 6 COFFEY, Q.C.:
 7 Q. And where is that?
 8 MR. OTTENHEIMER:
 9 A. The third bullet under "key messages".
 10 COFFEY, Q.C.:
 11 Q. Yes, and it reads, "A quality review began
 12 immediately when the problem was discovered.
 13 Eastern Health has had the method of testing
 14 for ER/PR receptors reviewed by external
 15 consultants. Their recommendations have been
 16 implemented and the consultants are expected
 17 to return to Eastern Health in early April to
 18 review what has been done. It is expected
 19 that Eastern Health will begin testing of new
 20 patients at that time." Now, of course, this
 21 is what you were referring to this morning.
 22 MR. OTTENHEIMER:
 23 A. Uh-hm.
 24 COFFEY, Q.C.:
 25 Q. But in the meantime the reports were in.

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1 MR. OTTENHEIMER:
 2 A. The reports were in, but as we can see from
 3 that bullet, there was still ongoing work to
 4 be completed.
 5 COFFEY, Q.C.:
 6 Q. Oh yes, that's to fix the problem, but in
 7 terms of what the problem was, if it was
 8 identified in the reports, it was already
 9 there, wasn't it?
 10 MR. OTTENHEIMER:
 11 A. But the exercise itself had not been
 12 completed.
 13 COFFEY, Q.C.:
 14 Q. Oh yeah, and I appreciate it, but would you
 15 agree that if it was going to be identified at
 16 all, it was already in those reports?
 17 MR. OTTENHEIMER:
 18 A. Subject to any final work or further work that
 19 had to be completed upon the implementation
 20 phase in and of itself being completed.
 21 COFFEY, Q.C.:
 22 Q. And if one wanted to know what the problem
 23 was, how did this happen, you'd get the
 24 reports and read them and (unintelligible).
 25 You didn't and I appreciate you didn't and you

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1 explained why, but -
 2 MR. OTTENHEIMER:
 3 A. But, as I say, the exercise and it's clear
 4 there in the third message under: "Key
 5 Messages" is that the consultants are expected
 6 to return Eastern Health in early April.
 7 COFFEY, Q.C.:
 8 Q. Yes, but they going to, at that point, to
 9 review what has been done which in relation to
 10 implementing the recommendations.
 11 MR. OTTENHEIMER:
 12 A. Uh-hm.
 13 COFFEY, Q.C.:
 14 Q. There's nothing said there about figuring out
 15 what the problem was.
 16 MR. OTTENHEIMER:
 17 A. But the expectation though, Mr. Coffey, that
 18 certainly I would have had at that time and
 19 earlier is that all information would be
 20 shared with me.
 21 COFFEY, Q.C.:
 22 Q. And you can't explain though why it hadn't
 23 come to you yet, as of February?
 24 MR. OTTENHEIMER:
 25 A. Because the process was not completed, that's

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1 the explanation or that is certainly the
 2 belief that I had and I would anticipate full
 3 information upon completion.
 4 COFFEY, Q.C.:
 5 Q. And your staff, back in November 3rd, Moira
 6 Hennessey on your behalf had been asking what
 7 are the general findings of those reports.
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. February 23rd comes and goes and you haven't
 12 been told.
 13 MR. OTTENHEIMER:
 14 A. And April is the expected conclusion date of -
 15 COFFEY, Q.C.:
 16 Q. Why have you got to wait for the end? Why is
 17 that? I mean, I just, you know -
 18 MR. OTTENHEIMER:
 19 A. Well as I said last week, Mr. Coffey, I mean,
 20 I accepted the view that -
 21 COFFEY, Q.C.:
 22 Q. Whose view did you have to wait? The
 23 Commissioner couldn't figure that out either.
 24 MR. OTTENHEIMER:
 25 A. No, no, I accepted the view that there were a

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1 number of phases throughout this whole process
 2 and I would wait until the process was
 3 completed, keeping in mind that there was no
 4 testing being done in our lab and that tests
 5 were being sent away to Mount Sinai Hospital
 6 in Toronto. So that particular issue had been
 7 resolved, there was no further risk to the
 8 patients of this province and we would
 9 eventually have a full understanding of what
 10 went wrong, how the implementation phase was
 11 carried out and what the final views and final
 12 report would entail upon completion of the
 13 process, and according to the last note that I
 14 had on this issue, a final review as early as
 15 early April.
 16 COFFEY, Q.C.:
 17 Q. Yeah, that still doesn't address the point,
 18 Mr. Ottenheimer, which is why you wouldn't ask
 19 what the initial report said, does it? I
 20 appreciate you want to know at the end, you
 21 want a wrap up report, that makes sense.
 22 MR. OTTENHEIMER:
 23 A. Correct.
 24 COFFEY, Q.C.:
 25 Q. But the fact that you are apprised day to day

1 at times minute to minute as to what's going
 2 on, people on your behalf are asking, trying
 3 to track down the George Tilleys and the Bob
 4 Williamses of the world to find out what's
 5 going on. Yet in this particular instance,
 6 this is the one case, I take it, where you can
 7 point to and say that I wanted to wait until
 8 the very end. And did you communicate that
 9 wish to Moira Hennessey and John Abbott?
 10 MR. OTTENHEIMER:
 11 A. It's quite possible I did. I can't be precise
 12 as to when or what the circumstances were
 13 surrounding that, but it's quite possible that
 14 I did.
 15 COFFEY, Q.C.:
 16 Q. Because otherwise, their failure to advise you
 17 in writing is almost inexplicable, isn't it?
 18 MR. OTTENHEIMER:
 19 A. If it were brought to my attention that there
 20 was a deliberate attempt to refrain from
 21 sharing that information with me, that I would
 22 have difficulty with.
 23 COFFEY, Q.C.:
 24 Q. Yeah, I appreciate that, but I take it that
 25 you may have communicated to your Deputy and

1 report and be told and then a final report?
 2 MR. OTTENHEIMER:
 3 A. That's quite possible as well.
 4 COFFEY, Q.C.:
 5 Q. There is, if we could please, Registrar, just
 6 a second. Commissioner--I'm sorry, Registrar,
 7 please, exhibit P-0129. Now this is an--

1 your Assistant Deputy that you didn't want to
 2 know until the final final report was in.
 3 MR. OTTENHEIMER:
 4 A. I think that's quite possible.
 5 COFFEY, Q.C.:
 6 Q. And is there any policy reason why that would
 7 be so? Any legal reason or policy reason why
 8 that would be so?
 9 MR. OTTENHEIMER:
 10 A. Not that I'm aware of.
 11 COFFEY, Q.C.:
 12 Q. Can you think of any other instances or
 13 instance during your time as Minister of
 14 Health where a similar thing happened?
 15 MR. OTTENHEIMER:
 16 A. There may have been, there may have been where
 17 a particular event occurred and an
 18 investigation is being carried out and a
 19 review of the circumstances surrounding the
 20 event, that may have been and it would not
 21 strike me as being unusual if that did in fact
 22 happen.
 23 COFFEY, Q.C.:
 24 Q. But it wouldn't at all be unusual to get an
 25 interim report, be told, another interim

1 exhibit is eighteen pages long and what it is-
 2 -it's a letter dated March 9, 2006, on
 3 Government of Newfoundland and Labrador
 4 stationery in the Department of Health and
 5 Community Services, office of the Deputy
 6 Minister. Thank you. And it's addressed to
 7 Mr. Mark Quinn of Canadian Broadcasting
 8 Corporation, and the "Re" is "Your request for
 9 access to information under Part II of the
 10 Access to Information and Protection of
 11 Privacy Act." And it refers then to--opens
 12 with a reference to November--February 3rd,
 13 I'm sorry, 2006. The department received your
 14 request for access to the following records
 15 and information" and lists them out, which all
 16 memos, letters, briefing notes, etc., between
 17 members of Eastern Health and the Department
 18 of Health between March 1, 2005 and December

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1 1, 2005, regarding hormone receptor tests for
 2 people with breast cancer. And then what this
 3 is - cut right to the second page for a moment
 4 - passed it. Actually, it's the third page.
 5 John Abbott, your Deputy Minister, has signed
 6 this. He's carboned it to George Tilley at
 7 the bottom here and, in effect--and I believe
 8 you've seen this before, haven't you, at least
 9 in the past month or so.
 10 MR. OTTENHEIMER:
 11 A. And I believe you pointed it out then.
 12 COFFEY, Q.C.:
 13 Q. Yes. And this a response to a ATIPP request,
 14 and that would be correct?
 15 MR. OTTENHEIMER:
 16 A. It appears to be, yes.
 17 COFFEY, Q.C.:
 18 Q. Now, sir, I understand--I gather - and I don't
 19 pretend to be any expert on this - that the
 20 Access to Information and Protection of
 21 Privacy Act requires that either the Minister
 22 of Deputy Minister sign the response letter?
 23 MR. OTTENHEIMER:
 24 A. That is my understanding.
 25 COFFEY, Q.C.:

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1 Q. And while you were Minister of Health, whose
 2 responsibility was it, yours or Mr. Abbott's?
 3 MR. OTTENHEIMER:
 4 A. I remember signing a request one time. It may
 5 have been when I was in the Department of
 6 Education as opposed to the Department of
 7 Health, but this particular one, as we just
 8 saw on the signing page--
 9 COFFEY, Q.C.:
 10 Q. Yes.
 11 MR. OTTENHEIMER:
 12 A. - was by Abbott.
 13 COFFEY, Q.C.:
 14 Q. Oh yeah, but just--what I was asking, and
 15 there's no issue about that, is that you--or
 16 Mr. Abbott didn't have a kind of an
 17 understanding that he'd sign them all or -
 18 MR. OTTENHEIMER:
 19 A. I don't recall ever signing one within the
 20 Department of Health.
 21 COFFEY, Q.C.:
 22 Q. On this, there's a particular aspect of this
 23 that I could--we could just leave it right
 24 there. There's an--this letter, which is a
 25 covering letter, covering in the sense of--and

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1 a response letter in the sense of explaining
 2 why certain access--or access is being denied
 3 to certain things, and it says "Information
 4 that is not non-responsive to the request is
 5 being severed, and access to parts of the
 6 documents are being denied in accordance with
 7 Paragraph 23-1B with ATIPP or by disclosure
 8 would reveal information provided in
 9 confidence from another province, and B,
 10 Section 30 of ATIPP, whereby personal
 11 information cannot be disclosed," which is
 12 right there. Now if you look through and go
 13 on to the next page, and I'm just going to
 14 scroll that right there, Page 4 of the doc--of
 15 the list, sorry. If I could, please. Okay.
 16 Yeah, that's not -
 17 THE COMMISSIONER:
 18 Q. You want Page 4 of the exhibit?
 19 COFFEY, Q.C.:
 20 Q. I'll just scroll down if I could, please. I
 21 know where I'm--there we are. Page 4. Thank
 22 you. That is an Eastern Health briefing note,
 23 ER/PR receptors, and apparently Mr. Abbott is
 24 sending this out to Mr. Quinn on March 9,
 25 2006, and you were still Minister at the time

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1 and no one in the department anyway knows that
 2 you'll be gone within the week. And that's
 3 that July 20, 2005, briefing note. It's there
 4 at the bottom of the page. We looked at this
 5 earlier. I'm going to ask you to--the second
 6 page of it right there. It's Page 5 of the
 7 exhibit, and here is a third page of that
 8 briefing note. It has "Actions" on the top,
 9 left-hand side in italics. We look down
 10 through this. The second-last paragraph -
 11 you'll notice Mr. Ottenheimer is not there.
 12 And if we can bring up, please, P-0075 to see
 13 what's in that paragraph in the original. Put
 14 Page 3 of it, please. That the second-last
 15 paragraph, in fact, reads "Eastern Health,
 16 Vice-President of Quality Diagnostic and
 17 Medical Services, Dr. Robert Williams, has
 18 also asked that an investigation be conducted
 19 into the five-week stoppage of
 20 immunoperoxidase staining for ER/PR receptors
 21 in 2003 by Dr. Ejeckam. Now that particular
 22 paragraph, which are being included in - and
 23 was included in the first briefing note you
 24 received on this matter back in July of 2005 -
 25 if we could go back, please, to P-0129, Page

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1 6, and see that that's not included there.
 2 Now is there anything in terms of the five-
 3 week stoppage of immunoperoxidase staining for
 4 ER/PR receptors in 2003 by Dr. Ejeckam and Dr.
 5 Williams having asked that an investigation be
 6 conducted into that, does that have anything
 7 to do with personal information that you're
 8 aware of?
 9 MR. OTTENHEIMER:
 10 A. I guess that line of questioning, Mr. Coffey,
 11 is best asked to Mr. Abbott.
 12 COFFEY, Q.C.:
 13 Q. Okay.
 14 MR. OTTENHEIMER:
 15 A. The request came in. I would not be aware of
 16 the fact there was a request, in all
 17 likelihood. There is a response to the
 18 request in accordance with the provisions of
 19 the legislation. It was signed off by my
 20 Deputy at the time, Mr. Abbott, and I have
 21 never seen the request nor the response.
 22 COFFEY, Q.C.:
 23 Q. Was it ever discussed with you?
 24 MR. OTTENHEIMER:
 25 A. Not to my knowledge. I simply do not recall

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1 that discussion, and that would raise--again,
 2 thinking in my own mind what that would do if
 3 in fact it were discussed with me, it would
 4 raise more questions than provide any answers.
 5 COFFEY, Q.C.:
 6 Q. And that--in fact, Mr. Ottenheimer, that was
 7 the point I was trying to make.
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. Is that, in fact, if this was brought up with
 12 you--
 13 MR. OTTENHEIMER:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. --you'd be asking John Abbott, well--sure, why
 17 are you leaving that out?
 18 MR. OTTENHEIMER:
 19 A. Uh-hm.
 20 COFFEY, Q.C.:
 21 Q. You know, for two thousand--the reference to
 22 2003.
 23 MR. OTTENHEIMER:
 24 A. My former Deputy is--would be in a much better
 25 position to respond to this.

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1 COFFEY, Q.C.:
 2 Q. I will be asking him that, but you have no
 3 recollection of him saying -
 4 MR. OTTENHEIMER:
 5 A. I do not.
 6 COFFEY, Q.C.:
 7 Q. Or getting your approval or anything for that.
 8 MR. OTTENHEIMER:
 9 A. I do not.
 10 COFFEY, Q.C.:
 11 Q. Sure. Okay. Have you ever been contacted by
 12 any patients about ER/PR?
 13 MR. OTTENHEIMER:
 14 A. The--one telephone call I had--in fact, it was
 15 from Gerri Rogers, who gave evidence--
 16 COFFEY, Q.C.:
 17 Q. Sure.
 18 MR. OTTENHEIMER:
 19 A. --here several weeks ago.
 20 COFFEY, Q.C.:
 21 Q. Yeah.
 22 MR. OTTENHEIMER:
 23 A. And she had called me, and that's one
 24 telephone--I know Ms. Rogers personally, and
 25 she had raised an issue, and like any other

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1 constituent could raise because, despite all
 2 of this, I'm still a Member of the House of
 3 Assembly and I have a district to represent.
 4 And I remember Ms. Rogers calling me one time
 5 and had a specific request, and I believe I
 6 may have been of some help to her. That was
 7 one discussion. I thought--you know, I've
 8 given a lot of thought to other discussions
 9 that I may have had with patients throughout
 10 this particular time, and I don't recall Mr.
 11 Coffey. It's quite possible it may have
 12 happened, but I don't recall.
 13 COFFEY, Q.C.:
 14 Q. And Ms. Rogers, in fact, stands out now
 15 certainly because she -
 16 MR. OTTENHEIMER:
 17 A. It's not--well, I remember the phone call.
 18 COFFEY, Q.C.:
 19 Q. Okay.
 20 MR. OTTENHEIMER:
 21 A. And, in fact, she did reference it.
 22 COFFEY, Q.C.:
 23 Q. Sure.
 24 MR. OTTENHEIMER:
 25 A. Yeah. And--but there may be others. I'm

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1 certainly--I don't want to discount that from
 2 being a possibility.
 3 COFFEY, Q.C.:
 4 Q. And in terms of assisting her at the time,
 5 what did that require of you?
 6 MR. OTTENHEIMER:
 7 A. I believe, if I recall correctly, she had some
 8 difficulty getting, you know, an appointment
 9 with a physician, and I don't know if I made
 10 the call directly or if I had just asked
 11 somebody to make a call to see if there was
 12 some issue, some problem that could easily be
 13 resolved. I understand that--I believe that
 14 the appointment was, in fact, made and I
 15 believe to Ms. Rogers satisfaction, something
 16 along those lines. And that's really, Mr.
 17 Coffey, more--my recollection of that is more
 18 along the lines of what Ms. Rogers had said
 19 herself two or three weeks ago.
 20 COFFEY, Q.C.:
 21 Q. Sure.
 22 MR. OTTENHEIMER:
 23 A. But I do specifically remember a phone call
 24 from her.
 25 COFFEY, Q.C.:

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1 Q. Could her phone call have been to complain
 2 that she couldn't get anybody at Eastern
 3 Health to speak to her about the results,
 4 because that's what she told us.
 5 MR. OTTENHEIMER:
 6 A. Yeah, and that is possible. That is possible.
 7 Maybe I'm confusing that with another case.
 8 That is possible.
 9 COFFEY, Q.C.:
 10 Q. And as Minister of Health at the time--
 11 MR. OTTENHEIMER:
 12 A. Uh-hm.
 13 COFFEY, Q.C.:
 14 Q. --would that have caused you concern?
 15 MR. OTTENHEIMER:
 16 A. Sure. Sure it would.
 17 COFFEY, Q.C.:
 18 Q. And did -
 19 MR. OTTENHEIMER:
 20 A. Either of those two possibilities.
 21 COFFEY, Q.C.:
 22 Q. Well, what about in terms of--do you recall if
 23 you ever then caused any communication to
 24 occur with Eastern Health to say, well, you
 25 know, I've got constituents.

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1 MR. OTTENHEIMER:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. I have a patient calling me saying she can't
 5 get anybody to return her phone calls.
 6 MR. OTTENHEIMER:
 7 A. Uh-hm.
 8 COFFEY, Q.C.:
 9 Q. Now I've addressed that. I--Mr. Ottenheimer
 10 have taken care of that but, in the meantime,
 11 how can that be? Did you ever take that up
 12 with Eastern Health?
 13 MR. OTTENHEIMER:
 14 A. It's quite possible in discussions that we
 15 have had. Did Ms. Rogers give any indication
 16 as to the date of that discussion I had with
 17 her?
 18 COFFEY, Q.C.:
 19 Q. Well, we do have an indication, I believe, in
 20 her--I believe it's January or February of
 21 '06. I think it was while you were still
 22 Minister, yeah.
 23 MR. OTTENHEIMER:
 24 A. Is that right?
 25 COFFEY, Q.C.:

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1 Q. I stand to be corrected and counsel will, I'm
 2 sure, intervene or let me know.
 3 MR. OTTENHEIMER:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. I'll take it up with you after.
 7 MR. OTTENHEIMER:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. But I believe it was January or February of
 11 '06 because the test results were coming back
 12 in January and February of '06.
 13 MR. OTTENHEIMER:
 14 A. I remember in November, of course, as a part
 15 of the briefing in the briefing material that
 16 I received and, in fact, it's included in the
 17 briefing note itself the extent to which
 18 notice and notification was being made to
 19 patients.
 20 COFFEY, Q.C.:
 21 Q. Uh-hm.
 22 MR. OTTENHEIMER:
 23 A. The success that they were having. Some
 24 referenced to the fact that notification,
 25 according to Eastern Health at least, was

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1 going relatively well. Obviously, there were
 2 some difficulties in terms of not being able
 3 to contact all patients. So there may very
 4 well have been some discussion in the November
 5 17th briefing that I had had with Eastern
 6 Health, simply because there is a reference to
 7 that as part of the information that they had
 8 shared with me at that time.

9 COFFEY, Q.C.:

10 Q. But to be told by--I mean, Gerri Rogers was--
 11 and she's pointed out herself, it's not hard
 12 to find, from her perspective.

13 MR. OTTENHEIMER:

14 A. Uh-hm.

15 COFFEY, Q.C.:

16 Q. That's how she--I think she characterized
 17 herself. And wouldn't you be mildly
 18 surprised, as Minister, to be told by her that
 19 they won't--they haven't called me back. And
 20 it's not--she's not one of those who would
 21 fall into the category that--you know, she
 22 would be relatively easily located.

23 MR. OTTENHEIMER:

24 A. Sure. Sure. And it's quite possible that
 25 maybe my Deputy or Assistant Deputy, Ms.

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1 Hennessey, may have followed up even further
 2 to that discussion that I had with Ms. Rogers.
 3 That is a possibility.

4 COFFEY, Q.C.:

5 Q. Okay. Now, Mr. Ottenheimer, with respect to--
 6 you know, as a Minister in the department -
 7 and I'll ask you this in a straightforward
 8 fashion - did you feel at the time that if you
 9 gave direction, that you would expect that it
 10 would be followed by the Deputy Minister and
 11 the ADM.

12 MR. OTTENHEIMER:

13 A. If I gave direction to one of my officials?

14 COFFEY, Q.C.:

15 Q. Yes.

16 MR. OTTENHEIMER:

17 A. That would normally be the expectation, yes.

18 COFFEY, Q.C.:

19 Q. And if they weren't going to follow it, would
 20 you expect to hear from them to that effect.

21 MR. OTTENHEIMER:

22 A. I would think so.

23 COFFEY, Q.C.:

24 Q. In respect of a matter such as ER/PR, do you
 25 recall what Mr.--what advice Mr. Abbott was

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1 giving you in terms of communication with
 2 patients, going all the way back to the summer
 3 of '05?

4 MR. OTTENHEIMER:

5 A. Uh-hm.

6 COFFEY, Q.C.:

7 Q. What was his attitude?

8 MR. OTTENHEIMER:

9 A. That--I know you have asked me that question
 10 before and -

11 COFFEY, Q.C.:

12 Q. Not in front of the Commission, I don't think,
 13 but we have talked before, yes.

14 MR. OTTENHEIMER:

15 A. Right.

16 COFFEY, Q.C.:

17 Q. Yes.

18 MR. OTTENHEIMER:

19 A. Right. And, you know, Mr. Abbott and I had
 20 what I considered to be a good working
 21 relationship. But on that point, I know at
 22 the meetings, for example, it's--his position
 23 on that does not stand out in my mind. There
 24 are -

25 COFFEY, Q.C.:

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1 Q. In particular, if I could, because I'll help
 2 you on this.

3 MR. OTTENHEIMER:

4 A. Yes. Yes.

5 COFFEY, Q.C.:

6 Q. Really, I'm going to suggest to you -

7 MR. OTTENHEIMER:

8 A. Uh-hm.

9 COFFEY, Q.C.:

10 Q. And you correct me if your recollection is
 11 different.

12 MR. OTTENHEIMER:

13 A. Uh-hm.

14 COFFEY, Q.C.:

15 Q. But the whole thing about deciding on a
 16 communications issue really came to the fore
 17 at the August 15th meeting with Kara Laing, Dr
 18 Kara Laing, and there were a bunch of people
 19 there, but there was--Dr. Laing was there to
 20 put the oncologist position--you were putting
 21 yours. You had expressed it earlier, but you
 22 were putting it again.

23 MR. OTTENHEIMER:

24 A. I expressed it as early as July 19th.

25 COFFEY, Q.C.:

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1 Q. And I appreciate that, but I'm getting at--is
 2 that meeting, in particular, with John Abbott
 3 there -
 4 MR. OTTENHEIMER:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. Or any meetings he attended--okay, what was
 8 Mr.--you were always saying, "Get on with it.
 9 My view is to get on with it."
 10 MR. OTTENHEIMER:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. Mr. Abbott's position was what?
 14 MR. OTTENHEIMER:
 15 A. I can say with certainty that Carolyn Chaplin,
 16 for example, would have shared my view on
 17 early disclosure, as would Darrell Hynes, my
 18 EA. I am less certain as to the view of Mr.
 19 Abbott.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. OTTENHEIMER:
 23 A. And you may have to ask him that.
 24 COFFEY, Q.C.:
 25 Q. And I will be, thank you. But in terms of--

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1 and you say you're less certain, I take it,
 2 because he wasn't vocal on it at all, was he?
 3 MR. OTTENHEIMER:
 4 A. As I just mentioned a few moments ago, his
 5 particular view on that does not stand out in
 6 my mind but, obviously, he would be able to
 7 share that with you.
 8 COFFEY, Q.C.:
 9 Q. Yes. Did he ever give you any advice?
 10 Leaving aside the meetings, he ever give you
 11 any advice on this point?
 12 MR. OTTENHEIMER:
 13 A. On that particular point?
 14 COFFEY, Q.C.:
 15 Q. On that point.
 16 MR. OTTENHEIMER:
 17 A. Not that I recall.
 18 COFFEY, Q.C.:
 19 Q. How about Moira Hennessey?
 20 MR. OTTENHEIMER:
 21 A. It was--I feel Ms. Hennessey was more the
 22 liaison, in a sense, between the board and the
 23 department in terms of getting information,
 24 getting the information for the briefing
 25 notes, helping to arrange the meetings and so

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1 on, on that particular point, Mr. Coffey, I
 2 don't recall.
 3 COFFEY, Q.C.:
 4 Q. Okay. So again, if she had a position, it
 5 doesn't stand out in your mind?
 6 MR. OTTENHEIMER:
 7 A. It's fair to say that.
 8 COFFEY, Q.C.:
 9 Q. Yeah. And Mr. Abbott was notable by his
 10 silence on the topic, as best you can recall?
 11 MR. OTTENHEIMER:
 12 A. Mr. Abbott was certainly a participant in
 13 these meetings, but on that particular topic -
 14 COFFEY, Q.C.:
 15 Q. Yeah, that's what I'm -
 16 MR. OTTENHEIMER:
 17 A. - his view does not stand out in my mind.
 18 COFFEY, Q.C.:
 19 Q. And it's fair, Darrell Hynes was certainly
 20 vocal enough about it?
 21 MR. OTTENHEIMER:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Carolyn Chaplin wasn't reticent to speak about
 25 it?

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1 MR. OTTENHEIMER:
 2 A. Not at all.
 3 COFFEY, Q.C.:
 4 Q. And nor were you?
 5 MR. OTTENHEIMER:
 6 A. Not at all.
 7 COFFEY, Q.C.:
 8 Q. Just one moment.
 9 THE COMMISSIONER:
 10 Q. Just a small point to make sure that I
 11 understand the just piece of information
 12 you've just given. When you said that the
 13 role of Ms. Hennessey was a liaison between
 14 the Board and the Department.
 15 MR. OTTENHEIMER:
 16 A. No, that, I should clarify that, Madam
 17 Commissioner. She was clearly an Assistant
 18 Deputy Minister.
 19 THE COMMISSIONER:
 20 Q. Um-hm.
 21 MR. OTTENHEIMER:
 22 A. But because her responsibility was for Board
 23 services, she would often be able to retrieve
 24 information from the Board, for example, and
 25 share them with the officials in the

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1 Department.

2 THE COMMISSIONER:

3 Q. When you say Board, do you mean those four

4 institutions or do you really mean "The

5 Board"?

6 MR. OTTENHEIMER:

7 A. No, I mean from an operational point of view

8 the -

9 THE COMMISSIONER:

10 Q. The four institutions?

11 MR. OTTENHEIMER:

12 A. Exactly.

13 THE COMMISSIONER:

14 Q. All right, thank you. So while she might have

15 been dealing for information with what you

16 would call one of the Boards, in fact, she was

17 more probably dealing with the administration

18 of -

19 MR. OTTENHEIMER:

20 A. That's right. It could be -

21 THE COMMISSIONER:

22 Q. - one of the institutions?

23 MR. OTTENHEIMER:

24 A. - for example, if an ambulance, if there were

25 a difficulty with an ambulance in a community

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1 in rural Newfoundland.

2 THE COMMISSIONER:

3 Q. Um-hm.

4 MR. OTTENHEIMER:

5 A. That being a Board service, in a sense, that

6 may very well come under her responsibility to

7 help from the Department's point of view in

8 trying to see exactly what the problem was.

9 THE COMMISSIONER:

10 Q. Thank you.

11 COFFEY, Q.C.:

12 Q. Thank you. If I could, Mr. Ottenheimer, just

13 a couple of final points. I may have asked

14 you this the last day, but it is last week.

15 The other boards, in terms of dealing with the

16 other boards on this issue, who--did you ever

17 deal with them?

18 MR. OTTENHEIMER:

19 A. I would think I did not. As I say, there was

20 some information that that was provided to me

21 in the briefing notes with reference to

22 information being forwarded by the other

23 boards. I would think both Mr. Abbott and Ms.

24 Hennessey would have had dealings with the

25 CEOs of the other three health care

Page 234

1 authorities.

2 COFFEY, Q.C.:

3 Q. That's what you understood was going on?

4 MR. OTTENHEIMER:

5 A. That would be my understanding, yes.

6 COFFEY, Q.C.:

7 Q. With respect to, finally, Dr. Laing and the

8 oncologists and I gather August 15, 2005, the

9 large meeting, because there is material, I'm

10 not going to take you thought this, earlier in

11 August, around August 11th or 12th that, yes,

12 around that time, in fact, that Ms. Hennessey,

13 in fact, at one point is stipulating or saying

14 in writing to somebody that, look, the

15 Minister is still uncomfortable with this, you

16 know, the fact that the patients don't know

17 and there's a meeting set up with the

18 oncologists. What do you recall about the

19 meeting itself?

20 MR. OTTENHEIMER:

21 A. The August 15th meeting?

22 COFFEY, Q.C.:

23 Q. Yes.

24 MR. OTTENHEIMER:

25 A. As I say, I didn't keep any notes. The only

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1 note I have is a handwritten note from Mr.

2 Tilley, I believe.

3 COFFEY, Q.C.:

4 Q. Yes.

5 MR. OTTENHEIMER:

6 A. And I guess, in fact, may I refer to that?

7 COFFEY, Q.C.:

8 Q. Sure, you can, please do.

9 MR. OTTENHEIMER:

10 A. Okay. Some discussion, Mr. Coffey, on the

11 importance of accuracy, discussion on the

12 Ventana system. There's reference here to -

13 COFFEY, Q.C.:

14 Q. Because I take at that point they had to

15 explain to you why they were shutting down

16 testing, even current testing?

17 MR. OTTENHEIMER:

18 A. That's correct.

19 COFFEY, Q.C.:

20 Q. Because you had this brand new Ventana

21 machine?

22 MR. OTTENHEIMER:

23 A. That's correct.

24 COFFEY, Q.C.:

25 Q. And so they were explaining that to you.

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1 Okay, go ahead.

2 MR. OTTENHEIMER:

3 A. And that is correct. Again, you're quite

4 right, Dr. Laing was present, as was Dr. Cook,

5 Dr. Williams, Mr. Tilley himself, Ms.

6 Hennessey and Dr. Fleming from the Department.

7 So according to these notes, and as you can

8 appreciate, these are the only notes that I

9 have, there's general discussion on a variety

10 of issues.

11 COFFEY, Q.C.:

12 Q. And in terms of communication with patients

13 about the fact that this retesting was

14 ongoing?

15 MR. OTTENHEIMER:

16 A. I certainly would have espoused the view that

17 it is important that we speak to this or that

18 Eastern Health speak to this issue publicly as

19 soon as possible. And I guess in addition to

20 the note that I just referred to, we have the

21 handwritten notes of Dr. Williams at that

22 meeting. And may I refer to that?

23 COFFEY, Q.C.:

24 Q. Sure, go ahead.

25 MR. OTTENHEIMER:

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1 A. In fact, it's perhaps--is it an exhibit?

2 COFFEY, Q.C.:

3 Q. If it hasn't been, it certainly is going to

4 be. Go ahead.

5 MR. OTTENHEIMER:

6 A. Okay. If I may, Madam Commissioner, may I

7 read it?

8 THE COMMISSIONER:

9 Q. Yes, if it's going to aid your recollection.

10 MR. OTTENHEIMER:

11 A. Well, it's very brief but it's perhaps the

12 best information that I have. It says "On

13 August 15th, 2005 a third briefing was

14 provided by Eastern Health officials for the

15 Minister. Handwritten notes of the meeting by

16 Dr. Williams shows that it was attended by the

17 Minister, Dr. Fleming, Ms. Hennessey, Mr.

18 Tilley, Dr. Laing, Dr. Cook and others.

19 Williams says," and in brackets, "(apparently

20 attributing to Dr. Laing, but unsure) that

21 will notify everyone who is to be retested.

22 Doesn't feel now is the time to write the

23 letter, but to wait until we have more

24 information. Dr. Laing said that Doctors

25 McCarthy and Ganguly agree with waiting to

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1 send something out until we have more

2 information." Note also says, "Minister," and

3 apparently I'm quoted here, "'If patient is

4 advised as soon as possible, the patient can

5 do what she or he wants to to do deal with the

6 issues.' The Minister concludes by saying he

7 will accept best advice for now and he wants

8 to meet again within two weeks. Eastern

9 Health will develop what should go in a letter

10 in the meantime."

11 COFFEY, Q.C.:

12 Q. Now, the actual notes, because that's a

13 summary probably produced by a lawyer, Exhibit

14 P-0138. And these are, and, Commissioner,

15 these will be--they're identified in the index

16 as being the notes of Dr. Williams. Dr.

17 Williams doesn't keep his notes in typed form,

18 but he did us the favour of having his

19 handwritten notes typed. This is Note No. 19

20 that he provided to us and it's August 15th,

21 '05. And he goes on about who's there and so

22 on. So the last one, "Will develop what

23 should go in a letter in the meantime." Now,

24 and that letter you recall I referred you this

25 morning to the fact that there's an e-mail

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1 July 18th, '05 saying or suggesting that the

2 Department had asked or told Eastern Health to

3 prepare a letter to go out to all the

4 patients. And now this again, "Will develop

5 what should go in a letter in the meantime."

6 August 15th, 2005. Do you recall who's

7 pushing--well, certainly you were pushing

8 contact with individual patients?

9 MR. OTTENHEIMER:

10 A. And -

11 COFFEY, Q.C.:

12 Q. Yes.

13 MR. OTTENHEIMER:

14 A. And the public.

15 COFFEY, Q.C.:

16 Q. Yes, and I appreciate that. But patients

17 first and then the public, that was certainly

18 your--you told us last week and -

19 MR. OTTENHEIMER:

20 A. Go public.

21 COFFEY, Q.C.:

22 Q. Yeah. And here the last bullet is "Will

23 develop what should go in a letter in the

24 meantime." So presumably one can contact

25 individual patients by word of mouth or by

Page 240

1 letter, that's the two ways you communicate?

2 MR. OTTENHEIMER:

3 A. Um-hm.

4 COFFEY, Q.C.:

5 Q. Was it your understanding that when the

6 individual communication occurred, it would be

7 in writing or verbally?

8 MR. OTTENHEIMER:

9 A. Perhaps either.

10 COFFEY, Q.C.:

11 Q. Yes.

12 MR. OTTENHEIMER:

13 A. Because one would generally require one method

14 and the other in the other manner. So

15 presumably either, I guess, would be possible,

16 Mr. Coffey.

17 COFFEY, Q.C.:

18 Q. Or perhaps even both?

19 MR. OTTENHEIMER:

20 A. Or both, yeah.

21 COFFEY, Q.C.:

22 Q. Because it verbally allows you to answer any

23 impromptu questions?

24 MR. OTTENHEIMER:

25 A. Um-hm.

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1 COFFEY, Q.C.:

2 Q. Or concerns. And written format actually is,

3 there's a record that somebody can look back

4 on?

5 MR. OTTENHEIMER:

6 A. I agree, either or both.

7 COFFEY, Q.C.:

8 Q. And you had no preference yourself as Minister

9 as to which one or if, in fact, both?

10 MR. OTTENHEIMER:

11 A. It was my view, Mr. Coffey, let's get it out

12 there, let's get it done, let's notify. And I

13 think as the note indicates that I had just

14 read, then the individual patient is free to

15 decide for herself or himself.

16 COFFEY, Q.C.:

17 Q. Well, I -

18 THE COMMISSIONER:

19 Q. I take it you weren't advocating any

20 particular method of communication?

21 MR. OTTENHEIMER:

22 A. In terms of -

23 THE COMMISSIONER:

24 Q. You were advocating communicating, but were

25 you advocating a particular method of

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1 communicating?

2 MR. OTTENHEIMER:

3 A. Not that I recall. Perhaps as Mr. Coffey and

4 I just suggested, either, either or both, but

5 immediate notification was important to me.

6 COFFEY, Q.C.:

7 Q. Yeah. See, and I appreciate this may have

8 been going on unbeknownst to you entirely,

9 okay, but there is other material that will be

10 explored here, another aspect of this matter

11 as to the methodology used and the factors

12 that came into that.

13 MR. OTTENHEIMER:

14 A. I'm not familiar with that.

15 COFFEY, Q.C.:

16 Q. Okay, you weren't, you weren't consulted about

17 it and -

18 MR. OTTENHEIMER:

19 A. I'm not familiar with that.

20 COFFEY, Q.C.:

21 Q. And you weren't apprised or told that Mr.

22 Ottenheimer, you know, there's legal advice

23 one way, there's views the other and so, you

24 didn't know -

25 MR. OTTENHEIMER:

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1 A. I am not familiar with that.

2 COFFEY, Q.C.:

3 Q. Okay. And I appreciate it, but I do have to

4 ask, so.

5 MR. OTTENHEIMER:

6 A. Okay.

7 COFFEY, Q.C.:

8 Q. Thank you, Madam Commissioner.

9 THE COMMISSIONER:

10 Q. All right. Mr. Simmons, I -

11 COFFEY, Q.C.:

12 Q. Thank you, Mr. Ottenheimer.

13 MR. OTTENHEIMER:

14 A. Thank you.

15 THE COMMISSIONER:

16 Q. I assume you're No. 1 on the list, but it's

17 about the time for the afternoon break, so why

18 don't we do that first. All right, I'll

19 adjourn for 15 minutes.

20 (RECESS)

21 THE COMMISSIONER:

22 Q. Please be seated. Mr. Simmons.

23 MR. JOHN OTTENHEIMER, EXAMINATION BY MR. DANIEL SIMMONS

24 MR. SIMMONS:

25 Q. Thank you, Commissioner. Mr. Ottenheimer,

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1 you've had a long stretch on the stand
 2 already, and I'm going to not keep you very
 3 long this afternoon. There's just a few areas
 4 I wanted to go back over and ask you some
 5 supplementary questions on.
 6 MR. OTTENHEIMER:
 7 A. Um-hm.
 8 MR. SIMMONS:
 9 Q. And the first is, I want to go back to where,
 10 the time period where Mr. Coffey left off
 11 again, and that's during the summer of 2005
 12 when you've described for us how you had
 13 contacts and meetings with people from Eastern
 14 Health on four different dates during that
 15 summer, the first being July 19th with Mr.
 16 Tilley, July 21st when there was a meeting,
 17 July 5th when there was a meeting--I'm sorry,
 18 August 5th when there was a meeting and August
 19 15th when you met again, and that was the last
 20 one that Mr. Coffey referred you to in his
 21 evidence. Now, when you first started here
 22 last week, did I understand you correctly to
 23 say that your recollections of what happened
 24 at these separate meetings weren't actually
 25 very clear and you had to go to the notes that

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1 you referred to to refresh your recollection,
 2 is that correct?
 3 MR. OTTENHEIMER:
 4 A. That is correct, Mr. Simmons. And as I
 5 mentioned in response to questions from Mr.
 6 Coffey, there are just so many meetings and
 7 briefings in the run of a day, I would have to
 8 rely on any notes that I have to assist me in,
 9 and to assist my recollection in terms of
 10 exactly what was said, who may have been
 11 present and who may have said what. And it's,
 12 you know, that's just the way it is.
 13 MR. SIMMONS:
 14 Q. So apart from having those notes available to
 15 you, would you have been able to tell us very
 16 much at all about what happened on those four
 17 separate occasions during that summer?
 18 MR. OTTENHEIMER:
 19 A. Only in a general way in the sense that I
 20 would make myself available to be informed by
 21 Eastern Health, to receive information from
 22 Eastern Health and to bring me up to date, I
 23 guess, as to exactly what the status of a
 24 particular situation might be. But in direct
 25 answer to your question, the notes and then

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1 they're only a few then, but the notes that I
 2 have would be of most assistance to me.
 3 MR. SIMMONS:
 4 Q. Okay. And when you became the Minister of
 5 Health, prior to that had you had any
 6 professional or other involvement or exposure
 7 in the health care system that would give you
 8 any background understanding of the way things
 9 worked in institutions like Eastern Health?
 10 MR. OTTENHEIMER:
 11 A. Certainly not from a health point of view.
 12 From an institutional point of view or board
 13 point of view I would say yes because of my
 14 background in education.
 15 MR. SIMMONS:
 16 Q. Um-hm.
 17 MR. OTTENHEIMER:
 18 A. Having been directly involved in the education
 19 sector and also as Minister of Education in
 20 working with school boards and educational
 21 institutions. So in a broad sense when one
 22 speaks of institutions, the answer to that
 23 question would be yes. However, specifically
 24 in health related matters, I did not have any
 25 prior experience with respect to health care

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1 institutions or health boards of any kind.
 2 MR. SIMMONS:
 3 Q. So in matters such as governance, management
 4 structures, those sorts of things, you would
 5 have had some personal familiarity with the
 6 way those things would work?
 7 MR. OTTENHEIMER:
 8 A. Um-hm.
 9 MR. SIMMONS:
 10 Q. But on issues related to clinical and medical
 11 issues, you would not have had any personal
 12 background experience in that?
 13 MR. OTTENHEIMER:
 14 A. That's a fair statement.
 15 MR. SIMMONS:
 16 Q. And it would be fair to say that that's a
 17 fairly common position for any minister of
 18 government to find themselves in?
 19 MR. OTTENHEIMER:
 20 A. Um-hm.
 21 MR. SIMMONS:
 22 Q. In that they find themselves in portfolios
 23 that aren't necessarily those in which they
 24 have a personal background?
 25 MR. OTTENHEIMER:

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1 A. Quite common.
 2 MR. SIMMONS:
 3 Q. Right. And it would be fair to say, as well,
 4 that any minister in that situation has to
 5 rely fairly heavily on those people in the
 6 civil service who have the continuity and the
 7 background knowledge about those portfolios?
 8 MR. OTTENHEIMER:
 9 A. Also a fair statement. A minister would work
 10 closely with his or her officials.
 11 MR. SIMMONS:
 12 Q. Yes.
 13 MR. OTTENHEIMER:
 14 A. And as you put it, it's the officials that
 15 would have the continuity and the expertise, I
 16 guess, in a particular area to help advise a
 17 minister who simply did not have the
 18 institutional knowledge and did not have the
 19 perhaps professional background in that
 20 particular discipline.
 21 MR. SIMMONS:
 22 Q. I see. And the Department of Health was a
 23 particular portfolio where the Department
 24 itself doesn't directly discharge many of the
 25 major responsibilities for providing health

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1 care in the Province, it's done through the
 2 agencies of the health authorities?
 3 MR. OTTENHEIMER:
 4 A. Certainly in the day-to-day operational side
 5 of things you are correct.
 6 MR. SIMMONS:
 7 Q. So similar then to how you would look to your
 8 department officials for their experience and
 9 expertise, would you also then have to look to
 10 those people who were administering the health
 11 authorities for their experience and expertise
 12 in matters relating to -
 13 MR. OTTENHEIMER:
 14 A. I would agree with that comment, which is
 15 essentially on the issue of notice was
 16 essentially the determining factor for me in
 17 reliance upon the professional medical advice
 18 that I had received. So generally in answer
 19 to your question, it's fair to say that one
 20 has to significantly rely upon those around
 21 you, upon the advice that you're given, upon
 22 the professional opinion of those that are
 23 there to advise and there to assist on any
 24 particular matter.
 25 MR. SIMMONS:

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1 Q. Okay. Now, I ought to ask you about some more
 2 specifics about those four occasions during
 3 the summer of 2005. And the first was July
 4 19th. And we saw copies of your agenda where
 5 you had a lunch meeting scheduled with Mr.
 6 Tilley for 12:30. I believe was saw Mr.
 7 Tilley's agenda where he had a lunch meeting
 8 scheduled for 12:30 that day. Do you have any
 9 recollection of actually meeting Mr. Tilley
 10 for lunch on that -
 11 MR. OTTENHEIMER:
 12 A. Well, there were -
 13 MR. SIMMONS:
 14 Q. Do you know what happened?
 15 MR. OTTENHEIMER:
 16 A. Yeah. There are two, as I said to Mr. Coffey,
 17 because he asked a similar question last week,
 18 there are two references to lunch or luncheon
 19 in the calendars.
 20 MR. SIMMONS:
 21 Q. Yes.
 22 MR. OTTENHEIMER:
 23 A. And I'm not sure which one is which. I know
 24 on the 19th the issue is, the issue that is
 25 the subject matter of this Inquiry was

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1 discussed to some extent, but whether it was
 2 inside the building or whether actually in the
 3 boardroom or in--outside the building or in my
 4 office, I'm not sure, because there were two
 5 and one was this date in July and the other
 6 was several weeks later in early September, so
 7 it's one or the other.
 8 MR. SIMMONS:
 9 Q. Now, we'll hear from other people as the
 10 Inquiry goes on, hear their recollections of
 11 these various, the various events in the same
 12 time period.
 13 MR. OTTENHEIMER:
 14 A. Um-hm.
 15 MR. SIMMONS:
 16 Q. Is it possible that you didn't actually meet
 17 with Mr. Tilley that day for lunch but only
 18 spoke with him by telephone and that the lunch
 19 meeting didn't go ahead?
 20 MR. OTTENHEIMER:
 21 A. On that day?
 22 MR. SIMMONS:
 23 Q. Yes.
 24 MR. OTTENHEIMER:
 25 A. As I recall there was a meeting of some sort

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1 on that day, as I recall. And again, I have
 2 the reference in my calendar.
 3 MR. SIMMONS:
 4 Q. Yes.
 5 MR. OTTENHEIMER:
 6 A. Which tends to support that.
 7 MR. SIMMONS:
 8 Q. Yes. Now, you were shown, I believe, some
 9 notes that Mr. Tilley had from the 19th.
 10 MR. OTTENHEIMER:
 11 A. Um-hm.
 12 MR. SIMMONS:
 13 Q. And we don't need to look at it now, but it's
 14 Exhibit P-0068. I'm going to suggest that Mr.
 15 Tilley kept two sets of notes and he had a
 16 book that he kept by his phone for phone calls
 17 and a separate meeting book that he kept for
 18 notes of meetings and that these particular
 19 notes came from his phone call book.
 20 MR. OTTENHEIMER:
 21 A. Um-hm.
 22 MR. SIMMONS:
 23 Q. And suggest that perhaps on that day, the
 24 19th, I don't know if it's significant or not,
 25 but perhaps there was actually no face-to-face

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1 meeting, but only a telephone discussion.
 2 MR. OTTENHEIMER:
 3 A. It's certainly my recollection there was an
 4 actual meeting on that day, which is confirmed
 5 by, as I say, the calendar note that I have.
 6 MR. SIMMONS:
 7 Q. Right.
 8 MR. OTTENHEIMER:
 9 A. And it's, you know, that is my recollection on
 10 that day.
 11 MR. SIMMONS:
 12 Q. Okay. Now, we have no other notes from that
 13 other than Mr. Tilley's note that we referred
 14 to earlier?
 15 MR. OTTENHEIMER:
 16 A. Mr. Tilley's note, I believe, to Joan Dawe, is
 17 that correct?
 18 MR. SIMMONS:
 19 Q. That would be the following day, on the 20th.
 20 MR. OTTENHEIMER:
 21 A. Right. Where he--yes, where he summarizes, I
 22 think, the situation, makes some reference to
 23 my views from the discussion of the 19th.
 24 MR. SIMMONS:
 25 Q. Okay. Now, I'll just ask you a couple of

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1 questions about what happened on the 19th,
 2 because we know the 19th lead to the meeting
 3 on the 21st with the briefing note prepared on
 4 the 20th and the briefing note was available
 5 for the larger meeting on the 21st. What can
 6 you actually recall about that first
 7 discussion with Mr. Tilley about the issue of
 8 public notification of what was happening with
 9 the ER/PR issue?
 10 MR. OTTENHEIMER:
 11 A. I recall expressing to Mr. Tilley my view that
 12 we should go public and that Eastern Health
 13 should go public on this as soon as possible,
 14 some general discussion as to the nature of
 15 the problem, some general discussion as to the
 16 history of the problem. And other than that
 17 in the absence of any record keeping or any
 18 note taking, not a lot more that I can offer
 19 at this time.
 20 MR. SIMMONS:
 21 Q. Do you recall Mr. Tilley's response to your
 22 expression that, of your view that Eastern
 23 Health should go public?
 24 MR. OTTENHEIMER:
 25 A. Not specifically.

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1 MR. SIMMONS:
 2 Q. Do you know if he was in favour or opposed or
 3 neutral on that position?
 4 MR. OTTENHEIMER:
 5 A. On that particular topic I simply do not
 6 recall exactly what he said. It's fair to
 7 say, I think, in later meetings, the view of
 8 Eastern Health became much clearer -
 9 MR. SIMMONS:
 10 Q. Yeah, that's in later meetings. But at that -
 11 MR. OTTENHEIMER:
 12 A. It was a unified collective view. But
 13 specific--in the absence of any note that I
 14 have here, I do not specifically recall what
 15 Mr. Tilley may have said at that time.
 16 MR. SIMMONS:
 17 Q. Would it be fair to think, though, that if Mr.
 18 Tilley had been very opposed to your view
 19 right at that initial meeting, that that's
 20 something that would probably stand out in
 21 your recollection?
 22 MR. OTTENHEIMER:
 23 A. It is possible, but perhaps not necessarily.
 24 MR. SIMMONS:
 25 Q. Okay. So we know then, what we know then from

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1 that meeting is that you expressed the view
 2 that you felt the issue should be made public
 3 and that you don't recall whether Mr. Tilley
 4 was opposed or in favour to that, of that at
 5 that time?
 6 MR. OTTENHEIMER:
 7 A. Well, I have, actually, Mr. Tilley's own note
 8 to that effect.
 9 MR. SIMMONS:
 10 Q. Yes.
 11 MR. OTTENHEIMER:
 12 A. And if I may, is it--do you want me to read
 13 that note?
 14 MR. SIMMONS:
 15 Q. Sure. Well, let's bring it up and we can look
 16 at it.
 17 MR. OTTENHEIMER:
 18 A. Okay.
 19 MR. SIMMONS:
 20 Q. It's P-0068. We'll just bring it up on the
 21 screen there. Okay, here we go. That's the
 22 one on the bottom of the page there, is it?
 23 MR. OTTENHEIMER:
 24 A. No, I'm thinking -
 25 MR. SIMMONS:

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1 Q. July 19th?
 2 MR. OTTENHEIMER:
 3 A. - about the July 20th note to Ms. Dawe.
 4 MR. SIMMONS:
 5 Q. Okay. No, well, this is the one that I'm
 6 referring to. This is one kept by Mr. Tilley
 7 on July 19th in his telephone logbook. And I
 8 think this was shown to you earlier in your
 9 direct examination last week.
 10 MR. OTTENHEIMER:
 11 A. It was.
 12 MR. SIMMONS:
 13 Q. You recall that?
 14 MR. OTTENHEIMER:
 15 A. Yes.
 16 MR. SIMMONS:
 17 Q. Which is Mr., we understand to be Mr. Tilley's
 18 note of some discussion with you on that, on
 19 that particular date, okay?
 20 MR. OTTENHEIMER:
 21 A. Okay.
 22 MR. SIMMONS:
 23 Q. And you were also now looking forward to July
 24 20th and Mr. Tilley's explanation what had
 25 happened on that -

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1 MR. OTTENHEIMER:
 2 A. No, no, but this is -
 3 MR. SIMMONS:
 4 Q. - day, are you?
 5 MR. OTTENHEIMER:
 6 A. - I believe--no, the note that I'm referring
 7 to is dated July 20th, but it's with respect
 8 to the discussion that we had had on the 19th.
 9 MR. SIMMONS:
 10 Q. Right.
 11 MR. OTTENHEIMER:
 12 A. And that's what I wish to read. It's very
 13 brief.
 14 MR. SIMMONS:
 15 Q. Okay. Well, we have that, we have that in
 16 evidence, we have that in evidence.
 17 MR. OTTENHEIMER:
 18 A. Okay.
 19 MR. SIMMONS:
 20 Q. Already. So what I'm interested in, actually,
 21 is your recollection and what you can tell me
 22 about that discussion with Mr. Tilley the
 23 prior day, not so much what he reports to Mrs.
 24 Dawe later, but whether you can shed any more
 25 light for us on what your recollection is of

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1 the discussion with him and what position, if
 2 any, he took in response to you saying that
 3 you felt Eastern Health should go public?
 4 MR. OTTENHEIMER:
 5 A. The answer to that question, I can--I would
 6 rely on this note because there's some
 7 reference to that specific point in Mr.
 8 Tilley's own note.
 9 MR. SIMMONS:
 10 Q. Okay.
 11 MR. OTTENHEIMER:
 12 A. It's not specifically my recollection, but
 13 it's certainly referred to in the note, which
 14 has helped me in giving a better understanding
 15 of exactly who said what at any particular
 16 time.
 17 MR. SIMMONS:
 18 Q. So based on your review of the note that Mr.
 19 Tilley sent to Ms. Dawe the next day, then
 20 what is your best recollection of what his
 21 position was regarding that?
 22 MR. OTTENHEIMER:
 23 A. That is correct, where I state, according to
 24 the note, "Edging to go public." Mr. Tilley
 25 presumably responds by saying "No doubt about

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1 the need to do that, but not until I know the
 2 size and shape of it and we'll be briefing the
 3 Minister early tomorrow."
 4 MR. SIMMONS:
 5 Q. Okay. Now, do you recall any discussion with
 6 him at that stage about the size and shape,
 7 what that was or what had to be done to
 8 determine the size or shape of the issue?
 9 MR. OTTENHEIMER:
 10 A. I tend to recall simply--either on the 19th or
 11 the 21st, it could be one or the other,
 12 Eastern Health not really having a full, as
 13 indicated in that note, a full grasp of the
 14 circumstances and not fully understanding the,
 15 I guess, the nature of the problem and the
 16 size and scope of it. That's certainly an
 17 impression that I have.
 18 MR. SIMMONS:
 19 Q. Okay. Let me bring you now to the meeting on
 20 the 21st.
 21 MR. OTTENHEIMER:
 22 A. Um-hm.
 23 MR. SIMMONS:
 24 Q. We've got two sets of notes from that meeting,
 25 Ms. Chaplin's notes and Mr. Hynes' notes. But

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1 before we go to those, let me ask you the same
 2 question, do you actually have any separate
 3 recollection yourself of what happened at that
 4 meeting apart from looking at those notes?
 5 MR. OTTENHEIMER:
 6 A. The notes would be my--would help me in any
 7 questions that you may have.
 8 MR. SIMMONS:
 9 Q. Right. So if I were to ask you separate from
 10 those notes what your recollection was of
 11 Eastern Health's position about going public
 12 or not at that meeting, I gather you wouldn't
 13 be able to tell me what Eastern Health's
 14 position was?
 15 MR. OTTENHEIMER:
 16 A. I would have to rely on these notes.
 17 MR. SIMMONS:
 18 Q. Okay. Well, let's take a quick look at the
 19 notes then. Carolyn Chaplin's note is at P-
 20 0159, please? Okay. Now, you've looked at
 21 these already. Can I bring you directly over
 22 to the second page where it begins,
 23 "Massaging, Public Message, Individual
 24 Message," and then says, "Positioning. Option
 25 for retesting, new tech available, etcetera,

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1 instead of errors in testing." And then it
 2 goes on, "Meeting with oncologists Monday,
 3 Tuesday next week. Continuing to retest.
 4 Report to oncologists." The opening, that
 5 there, would you read this note as consistent
 6 with their being discussion of both
 7 communication with individual patients and to
 8 the public at large at this meeting on the
 9 21st of July?
 10 MR. OTTENHEIMER:
 11 A. I would certainly suggest that obviously that
 12 issue was discussed.
 13 MR. SIMMONS:
 14 Q. Yes.
 15 MR. OTTENHEIMER:
 16 A. I would certainly recall impressing upon
 17 Eastern Health the need to go public with this
 18 issue as soon as possible.
 19 MR. SIMMONS:
 20 Q. Um-hm.
 21 MR. OTTENHEIMER:
 22 A. But it's clear here that there was that type
 23 of discussion going back and forth during the
 24 21st briefing.
 25 MR. SIMMONS:

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1 Q. Do you recall if anyone from Eastern Health at
 2 this stage was offering any resistance to the
 3 concept of either informing patients or at an
 4 appropriate time making a public statement
 5 about the retesting?
 6 MR. OTTENHEIMER:
 7 A. There was clearly a view, as I recall, that
 8 there was some resistance in going public at
 9 this time simply because they were not fully
 10 aware of the breadth and the scope of the
 11 situation as was being described and, I guess,
 12 was the subject matter of the briefing itself.
 13 MR. SIMMONS:
 14 Q. Right. So -
 15 MR. OTTENHEIMER:
 16 A. There is some recollection in my mind to that
 17 effect. However, I do remember indicating or
 18 expressing the view at that meeting that
 19 public disclosure was important.
 20 MR. SIMMONS:
 21 Q. Right. Resistance to the concept of going
 22 public at all or as to whether more time was
 23 required to know more about the problem before
 24 going public?
 25 MR. OTTENHEIMER:

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1 A. Perhaps at that particular point more the
 2 latter.
 3 MR. SIMMONS:
 4 Q. The latter. So it doesn't -
 5 MR. OTTENHEIMER:
 6 A. At that point.
 7 MR. SIMMONS:
 8 Q. It wasn't the concept of going public at that
 9 point it was the timing of it?
 10 MR. OTTENHEIMER:
 11 A. I think that's a fair statement.
 12 MR. SIMMONS:
 13 Q. Okay. Was there any concept or conception at
 14 that point of how long it might take to get a
 15 grip on the scope of the problem in order to
 16 be able to go public or was that known?
 17 MR. OTTENHEIMER:
 18 A. There was at one of the meetings, I don't
 19 recall if it was this one or one of the two
 20 meetings in August that it was certainly
 21 envisaged that this would be, the process
 22 would be completed sooner than later.
 23 MR. SIMMONS:
 24 Q. Um-hm. Okay.
 25 MR. OTTENHEIMER:

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1 A. But which meeting that was, Mr. Simmons, I
 2 can't tell you.
 3 MR. SIMMONS:
 4 Q. Okay. And if you look at these notes here,
 5 the middle portion there that says,
 6 "Positioning. Option for retesting. New
 7 technology available instead of errors in
 8 testing." Now, we're trying to infer things
 9 out of someone else's notes, which is always
 10 very dangerous.
 11 MR. OTTENHEIMER:
 12 A. Um-hm.
 13 MR. SIMMONS:
 14 Q. But would that seem consistent with the
 15 discussion about the type of public message
 16 that would be put out?
 17 MR. OTTENHEIMER:
 18 A. That is certainly possible. But again, and
 19 you just indicated the difficulty with this is
 20 that Ms. Chaplin would perhaps be in a better
 21 position to respond to that.
 22 MR. SIMMONS:
 23 Q. Okay. Mr. Hynes has some notes at P-0136,
 24 please? These are fairly, fairly brief and
 25 it's difficult to draw any, you know, solid

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1 inferences from them. But there is notice in
 2 the very last, mention in the very last line
 3 there of public notice, as well.
 4 MR. OTTENHEIMER:
 5 A. Um-hm.
 6 MR. SIMMONS:
 7 Q. So it appears that Mr. Hynes confirmed, as
 8 well, that there was discussion at this
 9 meeting about public notice?
 10 MR. OTTENHEIMER:
 11 A. Correct.
 12 MR. SIMMONS:
 13 Q. Right. Would it be fair to say that at this
 14 time, this first meeting after your contact
 15 with Mr. Tilley on the 19th, would it be fair
 16 to say that at this point there was no
 17 decision made about the type of communication
 18 to be made either to the patients or publicly,
 19 that it was still a matter under
 20 consideration?
 21 MR. OTTENHEIMER:
 22 A. That I cannot be certain on. I certainly
 23 always felt that when I met with Eastern
 24 Health, that there was a decision point, that
 25 there was a collective view as to how the

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1 matter should proceed. But again, going back
 2 to almost three years ago, I cannot recall
 3 specifically what the exactly wording was.
 4 MR. SIMMONS:
 5 Q. Right, so you can't tell us that the 21st of
 6 July is when the decision point was reached
 7 about what the plan was going to be for
 8 communicating this information? You can't
 9 tell us whether it was the 21st of July or
 10 later?
 11 MR. OTTENHEIMER:
 12 A. I cannot say with absolute certainty.
 13 MR. SIMMONS:
 14 Q. Okay, now there was another meeting then on
 15 the 5th of August and do I take it that you
 16 don't have any--apart from any notes, you
 17 don't have any independent recollection of
 18 what happened at that meeting either?
 19 MR. OTTENHEIMER:
 20 A. I have notes actually taken by Mr. Tilley,
 21 himself, I believe.
 22 MR. SIMMONS:
 23 Q. Right, well we'll hear from Mr. Tilley, so
 24 it's probably best that we can hear from Mr.
 25 Tilley about that, but I will take you ahead

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1 then to the last meeting in this series, which
 2 is the 15th of August.
 3 MR. OTTENHEIMER:
 4 A. Uh-hm.
 5 MR. SIMMONS:
 6 Q. Now I believe this was the first meeting that
 7 there were physicians and in particular an
 8 oncologist, Dr. Laing, present?
 9 MR. OTTENHEIMER:
 10 A. No, there were other physicians at other
 11 meetings.
 12 MR. SIMMONS:
 13 Q. Yes, but--okay, this is the first meeting that
 14 the oncologist was present at, is it not?
 15 MR. OTTENHEIMER:
 16 A. Dr. Laing is at this meeting. There was a
 17 meeting and Mr. Tilley may know best, but I
 18 remember a particular time when Dr. Ganguly
 19 was present.
 20 MR. SIMMONS:
 21 Q. Yes.
 22 MR. OTTENHEIMER:
 23 A. That may have been before or after the 15th.
 24 There was another oncologist in the room, I
 25 can't recall, it may have been a Dr. McCarthy,

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1 but I am not certain about that. I do
 2 remember Dr. Ganguly being present at one of
 3 the meetings. As I say, whether it's the 15th
 4 or before or after, I can't be absolutely
 5 sure.
 6 MR. SIMMONS:
 7 Q. So through this process then, you did have the
 8 benefit of hearing from, not just Dr. Laing
 9 but also Dr. McCarthy and Dr. Ganguly?
 10 MR. OTTENHEIMER:
 11 A. Certainly Dr. Ganguly.
 12 MR. SIMMONS:
 13 Q. And Dr. Laing?
 14 MR. OTTENHEIMER:
 15 A. And Dr. Laing, yes.
 16 MR. SIMMONS:
 17 Q. And did you hear from both of them on this
 18 issue of what type of communication it would
 19 be most appropriate to have with their
 20 patients?
 21 MR. OTTENHEIMER:
 22 A. Dr. Laing's position in this area stands out
 23 more to me on that particular point. However,
 24 even though Dr. Laing, what she had to say to
 25 me, again formed an impression of some

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1 importance, I didn't differentiate and say
 2 well this is what one person is saying or
 3 another individual at a particular meeting is
 4 saying, because I always found when I met with
 5 a group of people who represented Eastern
 6 Health, albeit there may have been a
 7 difference in opinion amongst themselves, I
 8 always felt that there was a unified view, a
 9 collective view that was presented to me.
 10 MR. SIMMONS:
 11 Q. Yes. Now my understanding and I may very well
 12 be proven wrong on this, is that the decision
 13 around how to deal with the communication,
 14 both to the public and the patients, evolved
 15 through this period, over these series of
 16 meetings.
 17 MR. OTTENHEIMER:
 18 A. Uh-hm.
 19 MR. SIMMONS:
 20 Q. And that the physicians brought a different,
 21 slightly different consideration to the mix
 22 than had been there before. You've told us
 23 that at the outset of this process there was a
 24 concern that we couldn't immediately go public
 25 until there was more knowledge about the size

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1 and scope of the problem, what the nature of
 2 it was going to be, correct?
 3 MR. OTTENHEIMER:
 4 A. Well that's in the note as well.
 5 MR. SIMMONS:
 6 Q. Yes, yeah. Now later, once these physicians
 7 become involved, was that when the idea of the
 8 stress and anxiety that might be caused to
 9 patients was introduced into the thinking
 10 around this issue?
 11 MR. OTTENHEIMER:
 12 A. Not necessarily, I always felt that this was a
 13 view that Eastern Health had espoused and even
 14 if a particular physician may not have been
 15 present at a particular meeting, I mean
 16 Eastern Health, obviously would have had the
 17 benefit of the opinion of those individuals
 18 who work on a day-to-day basis and have
 19 established that physician/patient
 20 relationship. It was certainly an impression
 21 that was formed in my mind that this was a
 22 concern of the professional staff right from
 23 day one.
 24 MR. SIMMONS:
 25 Q. Okay, an impression but you don't have any

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1 recollection that allows us to place at which
 2 of these meetings that -
 3 MR. OTTENHEIMER:
 4 A. I don't have a quotation, I don't have an
 5 actual date that I can refer to, but I can
 6 certainly say that it was my belief that this
 7 was the professional view essentially right
 8 from the start.
 9 MR. SIMMONS:
 10 Q. Okay. Well that's helpful, thank you. At the
 11 August 15th meeting, we do have the benefit of
 12 those notes that Dr. Williams kindly
 13 transcribed for us at P-0138. Can we look at
 14 those again, please? Mr. Coffey just referred
 15 you to those a few moments ago and there's
 16 reference here to Dr. Laing, Dr. McCarthy and
 17 Dr. Ganguly wanting to wait until there was
 18 something more available before they sent out
 19 information. Do you have any further
 20 recollection other than what you see in this
 21 note about the nature of that discussion at
 22 this meeting on the 15th?
 23 MR. OTTENHEIMER:
 24 A. No, that note, it tends to capsulize, I guess,
 25 what's taken place.

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1 MR. SIMMONS:
 2 Q. Good. Okay. And when we're talking about
 3 communication, there's a couple of pieces to
 4 the communication; one would be a general
 5 public statement which would be in the form of
 6 a press release or other public communication
 7 to the general public at large.
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 MR. SIMMONS:
 11 Q. And the other is communication directly with
 12 patients affected -
 13 MR. OTTENHEIMER:
 14 A. Correct.
 15 MR. SIMMONS:
 16 Q. - through this testing. Was there any ever
 17 doubt throughout your dealings that summer
 18 that there would be communication with the
 19 patients who were affected?
 20 MR. OTTENHEIMER:
 21 A. It was always my understanding that patients
 22 would be notified, of course, I think the
 23 practice originally, of course, would be to
 24 notify upon the receipt of results, as opposed
 25 to notification of the fact that there is an

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1 issue with respect to your own personal
 2 health. It was always my view that public
 3 notice would in fact allow that individual to
 4 deal with their own particular health
 5 circumstances and to, you know, obviously
 6 visit their own specialist, visit their
 7 oncologist or their general practitioner and
 8 receive the necessary medical advice from
 9 their -
 10 MR. SIMMONS:
 11 Q. But on, just to be very clear, on the part of
 12 communication with the patients, am I correct
 13 that there was never any suggestion at any
 14 time that patients who were affected by this
 15 retesting would not be informed of the
 16 results?
 17 MR. OTTENHEIMER:
 18 A. I was always of the view that at some point
 19 there would be notification to the patient by
 20 Eastern Health.
 21 MR. SIMMONS:
 22 Q. Yes, that was your understanding of Eastern
 23 Health's intentions?
 24 MR. OTTENHEIMER:
 25 A. Correct.

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1 MR. SIMMONS:
 2 Q. Right. Now, on the issue of the public
 3 communication and you've put that in the
 4 context of patients having the ability to make
 5 their own choices.
 6 MR. OTTENHEIMER:
 7 A. Uh-hm.
 8 MR. SIMMONS:
 9 Q. Which is quite clearly something that you
 10 brought to this consideration yourself based
 11 on your own personal point of view.
 12 MR. OTTENHEIMER:
 13 A. Uh-hm.
 14 MR. SIMMONS:
 15 Q. When others, such as the physicians and those
 16 involved in the administration of health care
 17 brought this other issue to you, which was the
 18 potential impact on people of the anxiety or
 19 stress of waiting for results.
 20 MR. OTTENHEIMER:
 21 A. Yes.
 22 MR. SIMMONS:
 23 Q. Did you consider that that was an appropriate
 24 type of consideration to take into account in
 25 making those decisions?

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1 MR. OTTENHEIMER:
 2 A. Well I listened to the professionals.
 3 MR. SIMMONS:
 4 Q. Yes.
 5 MR. OTTENHEIMER:
 6 A. I listened to the medical experts and it was
 7 that component of what I had heard in the
 8 expression of their concern, that was
 9 persuasive, I guess, in my exceeding to the
 10 decision that Eastern Health had made in terms
 11 of notification overall.
 12 MR. SIMMONS:
 13 Q. Had you not considered that to be a reasonable
 14 point of view or reasonable consideration to
 15 take into account, I presume you would have
 16 discounted it and you would have stuck to your
 17 view that there should be immediate public
 18 notice?
 19 MR. OTTENHEIMER:
 20 A. When I expressed the view, you know, this
 21 should be public as soon as possible.
 22 MR. SIMMONS:
 23 Q. Yes, but you did exceed--you did change that
 24 view, you did -
 25 MR. OTTENHEIMER:

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1 A. I listened to the medical experts.
 2 MR. SIMMONS:
 3 Q. Yes.
 4 MR. OTTENHEIMER:
 5 A. I listened to those who would be in the best
 6 position on a day-to-day basis in dealing with
 7 their own patients as to what they felt the
 8 reaction would be. I listened to them.
 9 MR. SIMMONS:
 10 Q. Yes, and would it be fair to say that had you
 11 not considered what they were saying to be
 12 reasonable, you would not have listened to
 13 them?
 14 MR. OTTENHEIMER:
 15 A. Well I would, the professional advice, the
 16 medical advice is what, again, swayed me to
 17 exceed to their view.
 18 MR. SIMMONS:
 19 Q. Okay, all right. I had some questions for you
 20 about these external review reports that you
 21 were asked about. These were the ones
 22 prepared by Dr. Banerjee and Ms. Wegrynowski
 23 in the fall of 2005, and my first question on
 24 that is did you, yourself, have any
 25 familiarity at that time about how Peer Review

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1 Reports were regarded within the health care
 2 system and what sort of protections, if any,
 3 there were for those reports, yourself?
 4 MR. OTTENHEIMER:
 5 A. Not specifically, that notion was really
 6 introduced to me when this issue became
 7 public, in fact long after I was out of
 8 politics, but it became public during Court
 9 proceedings that took place a number of months
 10 ago. So that whole notion was introduced to
 11 me at that time.
 12 MR. SIMMONS:
 13 Q. So I take it then that no one in your
 14 department, who you dealt with, had taken it
 15 upon themselves to give you any kind of
 16 briefing or background information on the
 17 nature of Peer Review in the health care
 18 system, the nature of any confidences
 19 associated with any briefings -
 20 MR. OTTENHEIMER:
 21 A. I don't recall that in the briefing prior to
 22 my leaving in March of 2006.
 23 MR. SIMMONS:
 24 Q. Okay, now you were asked quite a few questions
 25 about whether you had asked to see those

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1 reports, whether you had expected to see the
 2 reports. Did anyone ever refuse to give you
 3 those reports? Were you ever met with a
 4 statement that you cannot have them or you
 5 cannot get them?
 6 MR. OTTENHEIMER:
 7 A. I do not recall that being said to me.
 8 MR. SIMMONS:
 9 Q. Now, we know that the reports contained a
 10 series of recommendations in them. The
 11 reports came in, the reviewers were there in
 12 August and September of 2005, the reports came
 13 in in October and November of 2005, the
 14 reviewers were back later, I believe after you
 15 had left the portfolio. Were you aware,
 16 before you left your position as Minister of
 17 Health, that there had been recommendations
 18 made in those reports, recommendations for
 19 change? Without getting into the details,
 20 were you aware of the fact that there had been
 21 recommendations?
 22 MR. OTTENHEIMER:
 23 A. I believe one of the briefing notes refers to
 24 the fact that there were certain
 25 recommendations made, but that again, the

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1 process was ongoing.

2 MR. SIMMONS:

3 Q. Right, okay. So it wouldn't have surprised

4 you that there were recommendations coming out

5 of those reports -

6 MR. OTTENHEIMER:

7 A. No.

8 MR. SIMMONS:

9 Q. - and that Eastern Health was aware of what

10 those recommendations were?

11 MR. OTTENHEIMER:

12 A. No, not at all, that would be part and parcel

13 of that whole external review process.

14 MR. SIMMONS:

15 Q. Right. Now you didn't know the details of

16 what those recommendations were?

17 MR. OTTENHEIMER:

18 A. I did not, in detail.

19 MR. SIMMONS:

20 Q. Did you have any conception or any knowledge

21 as to whether anyone was actively doing

22 anything about those recommendations?

23 MR. OTTENHEIMER:

24 A. I guess generally in the sense of a process

25 that was ongoing, I think it's fair to say

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1 yes, but the specifics as to what those

2 recommendations were or what was being done to

3 respond to those recommendations, no.

4 MR. SIMMONS:

5 Q. Did you ever have any reason to think or to

6 suspect that anyone wasn't following up on the

7 recommendations, wasn't treating them

8 seriously, wasn't working towards implementing

9 them?

10 MR. OTTENHEIMER:

11 A. That thought never crossed my mind.

12 MR. SIMMONS:

13 Q. Okay, now from where you sat as the Minister

14 and you've told us about all the many

15 different issues that the Minister has to deal

16 with, how and when--when would you decide to

17 involve yourself in wanting to know more about

18 something at this level, the recommendations,

19 the details of the recommendations and what

20 was actively being done to implement them?

21 When would you choose to involve yourself in

22 that, as opposed to leaving it to your

23 officials to manage?

24 MR. OTTENHEIMER:

25 A. A similar question was asked by Mr. Coffey,

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1 upon completion of the task that was being

2 performed, when a final--when the work is

3 completed in its totality, I would at that

4 point certainly expect to be fully briefed and

5 fully apprised of all details.

6 MR. SIMMONS:

7 Q. That suggests to me, and correct me if I'm

8 wrong, that suggests to me that in the interim

9 that you had confidence in your people in the

10 Department of Health and those in Eastern

11 Health to adequately respond to any

12 recommendations coming from those reports in

13 the interim?

14 MR. OTTENHEIMER:

15 A. Specifically Eastern Health, the department

16 would be unrelated as it relates to the type

17 of work that was being done, but I think

18 that's fair to say that I would anticipate

19 that, you know, Eastern Health, particularly

20 during the implementation stage and the

21 follow-up to the implementation stage, would

22 be in a position to adequately address that.

23 MR. SIMMONS:

24 Q. Yes.

25 MR. OTTENHEIMER:

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1 A. But again, I was looking forward to receipt of

2 the entire report with all recommendations,

3 implementation review and work completed in

4 totality.

5 MR. SIMMONS:

6 Q. Good, okay. Only one other thing to ask you,

7 early I think in your questioning you were

8 asked some questions about the role of the

9 Board of Trustees of the Regional Health

10 Authority, in this case Eastern Health and I

11 presume it would apply to all four

12 authorities. Questions concerning whether the

13 role of the Board should be to set policy or

14 whether the Board should be involved

15 operationally in the affairs of that

16 particular authority.

17 MR. OTTENHEIMER:

18 A. Uh-hm.

19 MR. SIMMONS:

20 Q. In the case of Eastern Health, it was a very

21 large organization and it is a very large

22 organization, correct?

23 MR. OTTENHEIMER:

24 A. Correct.

25 MR. SIMMONS:

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1 Q. Over ten thousand employees and a merger of
 2 seven other authorities, a wide range of
 3 responsibilities geographically and through
 4 the continuum of care generally. In those
 5 circumstances would you expect that it would
 6 be in any way practical for a volunteer board
 7 to involve itself at the operational level in
 8 the running of that kind of an organization?
 9 MR. OTTENHEIMER:
 10 A. The Board of Trustees is a governance board.
 11 It establishes broad policies, it has a
 12 reporting mechanism to the department when
 13 called upon to do so.
 14 MR. SIMMONS:
 15 Q. Yes.
 16 MR. OTTENHEIMER:
 17 A. Enters into relationships with, for example,
 18 the CEO from a contractual point of view, for
 19 example. But I would think it is fair to say
 20 that strictly from an operational point of
 21 view, from an operational point of view, other
 22 than perhaps information sharing and briefing
 23 maybe from time to time, responding to
 24 requests that may be made of the operational
 25 side of things from the governance board,

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1 other than that, I think the role of the board
 2 is limited to those areas and there may be
 3 several others that I just discussed.
 4 MR. SIMMONS:
 5 Q. Okay, so it is more towards the policy side
 6 and there would not be an expectation that the
 7 Board would involve itself in the management
 8 of the operations.
 9 MR. OTTENHEIMER:
 10 A. In terms of active involvement from an
 11 operational point of view, I would agree.
 12 MR. SIMMONS:
 13 Q. No, so it would not surprise you that Eastern
 14 Health Board adopted a policy governance
 15 model, as opposed to some other model?
 16 MR. OTTENHEIMER:
 17 A. I would think that would be normal for an
 18 institutional board or a governance board of
 19 that size.
 20 MR. SIMMONS:
 21 Q. Okay, thank you very much, Mr. Ottenheimer. I
 22 don't have anything further.
 23 THE COMMISSIONER:
 24 Q. Thank you, Mr. Simmons. Mr. Browne?
 25 MR. BROWNE:

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1 Q. Thank you, Commissioner.
 2 MR. JOHN OTTENHEIMER, EXAMINATION BY MR. PETER BROWNE
 3 MR. BROWNE:
 4 Q. Good afternoon, Mr. Ottenheimer.
 5 MR. OTTENHEIMER:
 6 A. Hi, Mr. Browne.
 7 MR. BROWNE:
 8 Q. I represent a number of physicians with
 9 standing here, including Dr. Cook, who I think
 10 you met with in one of these meetings, the
 11 first meeting on the 21st, and Dr. Laing. So
 12 I'll ask your indulgence, I'll try to go over
 13 some of the issues, but briefly that Mr.
 14 Simmons did and look at it from a perspective
 15 of what the clinicians, I think was the term
 16 you used last week, advised you? Now, before
 17 I do that, I want to be clear on a number of
 18 points and as your evidence both here today
 19 and last Monday was that your immediate, I
 20 think you used the term last week, intuition
 21 on speaking with Mr. Tilley was to go public,
 22 is that a fair description?
 23 MR. OTTENHEIMER:
 24 A. Yes, it is.
 25 MR. BROWNE:

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1 Q. And that was, I guess, reconfirmed in some
 2 respects and this was on the 19th of July?
 3 MR. OTTENHEIMER:
 4 A. Uh-hm.
 5 MR. BROWNE:
 6 Q. And in some respects that was reconfirmed by
 7 the series of e-mails we've seen here today,
 8 Exhibit P-0312, I don't think it's necessary
 9 to go through them, but you saw the
 10 information that your Director of
 11 Communications sent back to various officials
 12 in government about the numbers, that being
 13 1200 to 1500, is that fair?
 14 MR. OTTENHEIMER:
 15 A. That's in one of the e-mails, correct.
 16 MR. BROWNE:
 17 Q. From these, I guess, various communications,
 18 both within your department and with Mr.
 19 Tilley, I think it's fair to say that a
 20 decision was made to have briefing and that
 21 briefing happened on the 21st of July?
 22 MR. OTTENHEIMER:
 23 A. Correct.
 24 MR. BROWNE:
 25 Q. Now, can I suggest to you that at that first

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1 meeting the only clinician present and I'm not
 2 including Dr. Williams because Dr. Williams'
 3 evidence, I think, evidence will show was his
 4 position within Eastern Health was more of an
 5 administrative--even though he was a
 6 physician, was an administrative position
 7 entirely, as opposed to a clinical position
 8 and that was Dr. Cook, would you agree with
 9 that?
 10 MR. OTTENHEIMER:
 11 A. In looking at the notes there, I know we have
 12 that referenced to Drs. McCarthy and Laing,
 13 but assuming they were not present -
 14 MR. BROWNE:
 15 Q. Right.
 16 MR. OTTENHEIMER:
 17 A. That's for another reference at another time,
 18 Dr. Cook and Dr. Williams are the only two
 19 physicians, that's correct.
 20 MR. BROWNE:
 21 Q. Is it fair to suggest perhaps that their names
 22 may have come up their as potential persons
 23 you may want to have at a future meeting and
 24 in fact, you did on August 15th?
 25 MR. OTTENHEIMER:

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1 A. That is quite possible.
 2 MR. BROWNE:
 3 Q. Now I note as well here and I believe it was
 4 from Exhibit P-0136 that--Mr. Hynes noted that
 5 at that point only 12 patients had been
 6 notified. Do you just want to confirm that
 7 for me?
 8 MR. OTTENHEIMER:
 9 A. It's in Mr. Hynes' note, yes.
 10 MR. BROWNE:
 11 Q. And that's from the 21st?
 12 MR. OTTENHEIMER:
 13 A. Uh-hm.
 14 MR. BROWNE:
 15 Q. Mr. Ottenheimer, do you recall--and I
 16 appreciate it's been some time, the length of
 17 that meeting?
 18 MR. OTTENHEIMER:
 19 A. Not with any accuracy, I do not.
 20 MR. BROWNE:
 21 Q. If I were to suggest to you that possibly 30
 22 minutes, is that a reasonable time period that
 23 you would think you would have?
 24 MR. OTTENHEIMER:
 25 A. In that range, that would be not unusual.

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1 MR. BROWNE:
 2 Q. I'm going to suggest as well that at that
 3 meeting, the information provided to you by
 4 the representatives of Eastern Health, looking
 5 back again on the information that we have so
 6 far, was that it had only conducted and this
 7 probably came from persons such as Dr.
 8 Williams or Dr. Cook, that at that point in
 9 time they had only conducted retests on 57 of
 10 this 12 to 1500 patients?
 11 MR. OTTENHEIMER:
 12 A. The numbers were quite small.
 13 MR. BROWNE:
 14 Q. Quite small. And that further, I'm going to
 15 suggest to you that at that point, of those
 16 57, the majority of those patients were for
 17 one year, 2002?
 18 MR. OTTENHEIMER:
 19 A. According to the note here, that is correct.
 20 MR. BROWNE:
 21 Q. Okay. And is it your recollection that at
 22 this meeting as well you expressed your views
 23 about going public to those present?
 24 MR. OTTENHEIMER:
 25 A. To my knowledge, yes.

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1 MR. BROWNE:
 2 Q. Now, Mr. Ottenheimer, my question is what
 3 would be the information you wanted to go to
 4 the public with, at that point, when you had
 5 57 patients, most of those out of 2002, out of
 6 1500, what information did you want to go to
 7 the public with?
 8 MR. OTTENHEIMER:
 9 A. If in fact we have a critical public health
 10 issue here involving a number, granted the
 11 number being unknown, it was my view that we
 12 should get it out there and let the individual
 13 choose for himself or herself any course of
 14 action that may be taken. Having said that,
 15 having said that, I accepted the views, as
 16 I've said repeatedly in the past several days,
 17 I've accepted the views of those professionals
 18 who indicated that it was felt, for a variety
 19 of reasons, there's a better way of doing
 20 this.
 21 MR. BROWNE:
 22 Q. Right, and I think you alluded to some
 23 questions from Mr. Simmons this afternoon, the
 24 officials of Eastern Health didn't know the
 25 scope and extent at that point in time?

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1 MR. OTTENHEIMER:
 2 A. Correct.
 3 MR. BROWNE:
 4 Q. And based on those numbers, what I've just
 5 given to you, that's a fair interpretation, is
 6 it not?
 7 MR. OTTENHEIMER:
 8 A. That is correct.
 9 MR. BROWNE:
 10 Q. And I'm going to suggest to you as well that
 11 going public at that point in time when not
 12 knowing the scope and extent of the problem,
 13 would not be in the public's best interests?
 14 MR. OTTENHEIMER:
 15 A. I, it was certainly my view that we should go
 16 public as soon as possible. In fact, it's
 17 referenced in Mr. Tilley's note to Ms. Dawe,
 18 dated the 20th, as a result of a discussion I
 19 had with Mr. Tilley the day before, I realized
 20 that there was that issue as well, that you
 21 just raised, however, that was my view and I
 22 expressed it.
 23 MR. BROWNE:
 24 Q. Oh I know, and I understand your view, but
 25 looking back at it now and that's, we're sort

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1 of with the benefit of hindsight, we know a
 2 lot more information, but wouldn't it be much
 3 better to be, if we're going to go public, to
 4 be more accurate and know the scope and extent
 5 of the problem before advising the public?
 6 MR. OTTENHEIMER:
 7 A. Well essentially, I mean, that was some of the
 8 information that was shared at these meetings
 9 that I had with Eastern Health. And I
 10 listened to what Eastern Health and their
 11 professional advice was at that time.
 12 MR. BROWNE:
 13 Q. Sure.
 14 MR. OTTENHEIMER:
 15 A. But, as I say, it did differ from my own
 16 personal view.
 17 MR. BROWNE:
 18 Q. Now in fairness as well, Mr. Ottenheimer, at
 19 this point if you had gone public with that--
 20 that little bit of information where you
 21 didn't know the extent of the problem, you had
 22 one year out of between 1997 and they were
 23 saying 2004 -
 24 MR. OTTENHEIMER:
 25 A. Uh-hm.

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1 MR. BROWNE:
 2 Q. And you're not knowing the extent of the
 3 problem, could you not have been criticised
 4 for that as well?
 5 MR. OTTENHEIMER:
 6 A. I accept that point, I think there would be a
 7 significant amount of criticism in going
 8 public -
 9 MR. BROWNE:
 10 Q. Too early.
 11 MR. OTTENHEIMER:
 12 A. - without sufficient information. However, my
 13 own personal view is that that would be the
 14 more cautious approach in a general sense.
 15 MR. BROWNE:
 16 Q. Now, I want to jump ahead to the next briefing
 17 meeting, I think there were two, but the one
 18 I'm focussed on is August 15th because I don't
 19 believe there were any, either Dr. Laing or
 20 Dr. Cook was present at the August 5th
 21 meeting, at least that's my understanding, but
 22 both were present on the August 15th?
 23 MR. OTTENHEIMER:
 24 A. Correct.
 25 MR. BROWNE:

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1 Q. And you have indicated again here today, and
 2 last week, your concerns about patient safety.
 3 MR. OTTENHEIMER:
 4 A. Uh-hm.
 5 MR. BROWNE:
 6 Q. I'm also going to introduce the concept of, at
 7 this stage, the notion of the best interest of
 8 the patient, but right now, I just want to
 9 focus on your concerns about patient safety.
 10 And that was discussed, I would suggest, with
 11 the clinicians at that meeting because they
 12 had informed you that the ER/PR testing was,
 13 at the Health Sciences, was shut down and was
 14 now being sent off to Mount Sinai?
 15 MR. OTTENHEIMER:
 16 A. And that, for me, was a critical piece of
 17 information. Whenever I had learned of that,
 18 I'm not sure if it was that particular date,
 19 but it was certainly around that time.
 20 MR. BROWNE:
 21 Q. Sure. And can I ask you whether or not you
 22 can recall the rationale provided at that time
 23 for closing down or shutting down the ER/PR
 24 testing?
 25 MR. OTTENHEIMER:

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1 A. I guess along the lines of minimizing further
 2 risk to patients.
 3 MR. BROWNE:
 4 Q. Right. Is it possible as well there was some
 5 discussion about the fact that they weren't
 6 sure whether the old system, the DAKO, the
 7 semi automated system, was undercalling
 8 results or whether the new system, the Ventana
 9 system was overcalling the results?
 10 MR. OTTENHEIMER:
 11 A. There may very well have been some discussion
 12 along those lines because right from day one
 13 we knew that the Ventana system has replaced
 14 the earlier and older DAKO system.
 15 MR. BROWNE:
 16 Q. Now, another aspect of this meeting, I think
 17 you've indicated this to both Mr. Coffey and
 18 to Mr. Simmons, was the issue of disclosure
 19 both for patients and for the public.
 20 MR. OTTENHEIMER:
 21 A. Uh-hm.
 22 MR. BROWNE:
 23 Q. We know your position on a public disclosure,
 24 but as I said to you, the concept of the best
 25 interest of the patient and I want to

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1 introduce that now and introduce that in
 2 respect of the advice or the information Dr.
 3 Laing expressed during that meeting. I'll
 4 suggest to you that it was a collective view,
 5 and I think you were very astute to point out
 6 that there seemed to be a collective view from
 7 the representatives of Eastern Health in these
 8 meetings each time it was expressed?
 9 MR. OTTENHEIMER:
 10 A. That is my recollection.
 11 MR. BROWNE:
 12 Q. But at this meeting, in particular you recall
 13 Dr. Laing giving some additional information
 14 from the oncology perspective, is that fair?
 15 MR. OTTENHEIMER:
 16 A. That is a fair statement.
 17 MR. BROWNE:
 18 Q. And the position that she provided, at least
 19 to your recollection and you can tell me if
 20 this is correct or not, is that the
 21 oncologists were concerned over going public
 22 too early because it may create an anxiety for
 23 their individual patients because they didn't
 24 know--they wouldn't know at that point the
 25 results of their retest, is that fair?

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1 MR. OTTENHEIMER:
 2 A. That statement represents, for me, I think
 3 perhaps the most profound argument that I had
 4 heard throughout all of this, the issue of
 5 stress and duress on the patient.
 6 MR. BROWNE:
 7 Q. And what they were suggesting is that it would
 8 be more preferable to wait and get the retest
 9 results back, so that then they could meet
 10 with patients individually and explain the
 11 original results, in light of the retest
 12 results, as a package.
 13 MR. OTTENHEIMER:
 14 A. That was the view that was expressed to me.
 15 MR. BROWNE:
 16 Q. And I want to ask you as well, do you recall
 17 any discussion at that meeting about an
 18 anticipated time line as to when they would
 19 expect to receive the retest results back from
 20 Mount Sinai?
 21 MR. OTTENHEIMER:
 22 A. I think there may be a reference in one of the
 23 notes, actually.
 24 MR. BROWNE:
 25 Q. I'm going to suggest to you that it was

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1 probably four to six weeks with some
 2 discussion.
 3 MR. OTTENHEIMER:
 4 A. That sounds about right.
 5 MR. BROWNE:
 6 Q. And Dr. Williams noted that in exhibit P-0138.
 7 MR. OTTENHEIMER:
 8 A. Okay.

1 MR. BROWNE:
 2 Q. And you, I think, testified last week as well
 3 that clinicians were full participants in this
 4 meeting?
 5 MR. OTTENHEIMER:
 6 A. I certainly felt they were, yes.
 7 MR. BROWNE:
 8 Q. As were you.
 9 MR. OTTENHEIMER:
 10 A. I was there to, I guess, be briefed, listen to
 11 their concerns, and I was interested in
 12 receiving as much information on this issue as
 13 possible.
 14 MR. BROWNE:
 15 Q. Okay. And what I'm going to suggest as well
 16 is that in these meetings, the representatives
 17 of Eastern Health had both patient safety and

1 MR. BROWNE:
 2 Q. --that they were suggesting to you not to go
 3 public at all--
 4 MR. OTTENHEIMER:
 5 A. Uh-hm.
 6 MR. BROWNE:
 7 Q. --and rather than going public but just a
 8 question of timing, then you had a ministerial
 9 responsibility to intervene if you felt that
 10 they were giving advice that was contrary to
 11 your role as Minister of Health.
 12 MR. OTTENHEIMER:
 13 A. Well, they were giving me advice and
 14 expressing an opinion on behalf of the people
 15 that they work with on a day-to-day basis, and
 16 I respected that opinion.
 17 MR. BROWNE:
 18 Q. And can I suggest that you felt, as Minister--
 19 that you felt the most responsible thing to do
 20 was to go public when you had a complete
 21 picture of what was going on at Eastern
 22 Health.
 23 MR. OTTENHEIMER:
 24 A. I felt I would be guided by the professional
 25 opinion of those experts and individuals

1 the best interest of the patients foremost in
 2 their mind.
 3 MR. OTTENHEIMER:
 4 A. I would have to agree with you. That was the
 5 impression that was left with me which allowed
 6 me, I guess, to place faith and confidence in
 7 what they were saying to me at any particular
 8 meeting that I attended with them.
 9 MR. BROWNE:
 10 Q. Furthermore, I suggest as well that at no
 11 point did any representatives from Eastern
 12 Health say not to go public. Rather, it was a
 13 question of timing.
 14 MR. OTTENHEIMER:
 15 A. I can't--I can't speak to that, Mr. Browne.
 16 MR. BROWNE:
 17 Q. Well -
 18 MR. OTTENHEIMER:
 19 A. I just have no recollection.
 20 MR. BROWNE:
 21 Q. Sir, if that were the case--I'm going to
 22 suggest then, if you had gotten the
 23 impression--
 24 MR. OTTENHEIMER:
 25 A. Uh-hm.

1 around me from whom I was seeking advice.
 2 MR. BROWNE:
 3 Q. Registrar, can we enter exhibit 0161, please?
 4 THE COMMISSIONER:
 5 Q. 0161?
 6 MR. BROWNE:
 7 Q. Yes, Commissioner.
 8 THE COMMISSIONER:
 9 Q. It's a "P" exhibit? "P" exhibit?
 10 MR. BROWNE:
 11 Q. Yes, please.
 12 THE COMMISSIONER:
 13 Q. All right, entered.
 14 EXHIBIT ENTERED AND MARKED P-0161
 15 MR. BROWNE:
 16 Q. And Page 25, Registrar, please? Mr.
 17 Ottenheimer, you may not have seen this
 18 document before, but this is the document
 19 published by the Canadian Patient Safety
 20 Institute. It is my understanding -
 21 THE COMMISSIONER:
 22 Q. Is this their recent document, Mr.--is this
 23 the one released quite recently?
 24 MR. BROWNE:
 25 Q. Yes.

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1 THE COMMISSIONER:
 2 Q. Okay, thank you.
 3 MR. BROWNE:
 4 Q. It is a document prepared by a number of
 5 stakeholders in the health care system,
 6 including patients, various representatives of
 7 the Nursing Association, ethics and so on.
 8 All possible stakeholders in the health care
 9 system have representatives on this committee.
 10 And I understand that these, in fact--this
 11 document is Canadian Disclosure Guidelines and
 12 this was recently ratified, I think, in the
 13 past month or so. Now at Page 25 you'll see--
 14 Mr. Ottenheimer, please take a minute and read
 15 the section, "Multi-Patient Disclosure." Just
 16 let me know when you're finished, please.
 17 MR. OTTENHEIMER:
 18 A. Uh-hm. Okay.
 19 MR. BROWNE:
 20 Q. Okay.
 21 MR. OTTENHEIMER:
 22 A. Uh-hm.
 23 MR. BROWNE:
 24 Q. I'm going to suggest to you, sir, that the
 25 sentiments expressed in this section are

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1 similar to those expressed to you by the
 2 clinicians and representatives of Eastern
 3 Health at the August 15th meeting.
 4 MR. OTTENHEIMER:
 5 A. I would agree.
 6 MR. BROWNE:
 7 Q. Okay. And I'm going to suggest consisted,
 8 because they wanted to tell individual
 9 patients in person and--as I've indicated
 10 earlier.
 11 MR. OTTENHEIMER:
 12 A. Uh-hm.
 13 MR. BROWNE:
 14 Q. They wanted to do it at a time when they could
 15 tell the patients the retest results?
 16 MR. OTTENHEIMER:
 17 A. Yes.
 18 MR. BROWNE:
 19 Q. They hoped to have the retest results within a
 20 matter of four to six weeks, and they wanted
 21 to complete this process before going public.
 22 MR. OTTENHEIMER:
 23 A. That--essentially, I agree with you. That,
 24 essentially, tends to represent their view at
 25 that time.

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1 MR. BROWNE:
 2 Q. Okay. That's all the questions. Thank you,
 3 Mr. Ottenheimer, I appreciate it.
 4 MR. OTTENHEIMER:
 5 A. Thank you.
 6 THE COMMISSIONER:
 7 Q. Now where do we go next? Oh, Ms. O'Dea.
 8 MS. O'DEA:
 9 Q. Commissioner, we have no questions for Mr.
 10 Ottenheimer.
 11 THE COMMISSIONER:
 12 Q. Thank you. Ms. Newbury?
 13 MR. JOHN OTTENHEIMER, EXAMINATION BY MS. JENNIFER NEWBURY
 14 MS. NEWBURY:
 15 Q. Good afternoon, Mr. Ottenheimer.
 16 MR. OTTENHEIMER:
 17 A. Good afternoon.
 18 MS. NEWBURY:
 19 Q. Jennifer Newbury for the Canadian Cancer
 20 Society. I would like to ask just a couple of
 21 questions on a couple of areas.
 22 MR. OTTENHEIMER:
 23 A. Uh-hm.
 24 MS. NEWBURY:
 25 Q. Number one, just a general question. Would

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1 you expect that you or someone in your
 2 department would be advised during the summer
 3 of 2005 of significant developments during the
 4 investigation of the ER/PR problem?
 5 MR. OTTENHEIMER:
 6 A. During the summer of 2005?
 7 MS. NEWBURY:
 8 Q. That's, of course, after your July 19th
 9 introduction.
 10 MR. OTTENHEIMER:
 11 A. Right. Right. And after the briefing on the
 12 19th or the 21st. Yeah, it is quite possible
 13 that that could--that could be expected.
 14 MS. NEWBURY:
 15 Q. Okay.
 16 MR. OTTENHEIMER:
 17 A. It's quite possible.
 18 MS. NEWBURY:
 19 Q. Now this is either you or someone in your
 20 department.
 21 MR. OTTENHEIMER:
 22 A. Uh-hm.
 23 MS. NEWBURY:
 24 Q. Would you expect if it's a significant
 25 development that someone would know about that

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1 during the summer? I'm just wondering what
 2 the protocol is for dealing with this type of
 3 an issue.
 4 MR. OTTENHEIMER:
 5 A. I guess in the absence of a defined protocol,
 6 particularly where the whole issue of
 7 notification to patients was, you know,
 8 central, I guess, to this issue and in the
 9 absence of a defined protocol, it's difficult
 10 to express really what the expectation may or
 11 may not have been. As I say, that essentially
 12 was the difficulty, I guess, when centering
 13 around notification and public notice, and
 14 that was central to the meetings of the 19th
 15 and the 21st and again on the 5th and the 15th
 16 of August.
 17 MS. NEWBURY:
 18 Q. Okay. So you're saying that your focus is on
 19 communications, primarily, and not on -
 20 MR. OTTENHEIMER:
 21 A. Well, that would include, wouldn't it?
 22 MS. NEWBURY:
 23 Q. Okay, including the communications.
 24 MR. OTTENHEIMER:
 25 A. Because that would include--

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1 MS. NEWBURY:
 2 Q. Sure. Okay.
 3 MR. OTTENHEIMER:
 4 A. --obviously the--those individuals whom you
 5 represent.
 6 MS. NEWBURY:
 7 Q. Okay. Now I'd like to refer to exhibit P-
 8 0124.
 9 MR. OTTENHEIMER:
 10 A. Uh-hm.
 11 MS. NEWBURY:
 12 Q. And specifically Page 4, which is the October
 13 3, 2005, briefing note, which was for your
 14 department, as I understand it. Now according
 15 to the briefing note which you've been
 16 referred to earlier, the fourth bullet
 17 indicates that a representative from Ventana
 18 visited the laboratory in July to review use
 19 and practices of the Ventana system. In their
 20 written report, they stated that they "found
 21 the system to be operating as expected and
 22 that the procedures used by technicians were
 23 appropriate and as trained." Now first of
 24 all, would you consider that information to be
 25 significant or to represent a significant

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1 development?
 2 MR. OTTENHEIMER:
 3 A. Certainly, looking at this three years later--
 4 MS. NEWBURY:
 5 Q. Uh-hm.
 6 MR. OTTENHEIMER:
 7 A. --in the context of what has transpired over a
 8 significant period of time, I would say yes.
 9 MS. NEWBURY:
 10 Q. Okay.
 11 MR. OTTENHEIMER:
 12 A. It's difficult to, I guess, really speak to,
 13 you know, that particular point in the context
 14 of what we knew in 2005.
 15 MS. NEWBURY:
 16 Q. Sure.
 17 MR. OTTENHEIMER:
 18 A. But, certainly, looking back at it--
 19 MS. NEWBURY:
 20 Q. Okay.
 21 MR. OTTENHEIMER:
 22 A. --and knowing the information that we now
 23 know, the answer may very well be different.
 24 MS. NEWBURY:
 25 Q. Okay. So you do agree that in retrospect--or

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1 it's your view that in retrospect this would
 2 be considered a significant development.
 3 MR. OTTENHEIMER:
 4 A. That would be significant.
 5 MS. NEWBURY:
 6 Q. Uh-hm.
 7 MR. OTTENHEIMER:
 8 A. As I say, in 2008 looking back--
 9 MS. NEWBURY:
 10 Q. Sure.
 11 MR. OTTENHEIMER:
 12 A. --in terms of what has transpired since 2005.
 13 I'm not so sure if that can be said in 2005 in
 14 the context of what information may be
 15 available at that time.
 16 MS. NEWBURY:
 17 Q. Okay. So you're not sure whether you or
 18 perhaps someone else in your department would
 19 have considered that a significant development
 20 back in 2005.
 21 MR. OTTENHEIMER:
 22 A. I'm--I can't speak to that.
 23 MS. NEWBURY:
 24 Q. Okay. Do you have any recollection or any
 25 written record of whether you or perhaps

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1 someone else in your department was told this
 2 information during either July or August of
 3 2005.
 4 MR. OTTENHEIMER:
 5 A. About the Ventana -
 6 MS. NEWBURY:
 7 Q. Exactly, that fourth bullet, the information
 8 that's contained in that fourth bullet -
 9 MR. OTTENHEIMER:
 10 A. Certainly, information was shared with me
 11 about the Ventana system--
 12 MS. NEWBURY:
 13 Q. Right.
 14 MR. OTTENHEIMER:
 15 A. --replacing the earlier Dako system.
 16 MS. NEWBURY:
 17 Q. Uh-hm.
 18 MR. OTTENHEIMER:
 19 A. Specifically though with respect to, you know,
 20 the written report and the acknowledgment that
 21 procedures used were appropriate and as
 22 trained, not specifically that reference but,
 23 generally, the system, yes.
 24 MS. NEWBURY:
 25 Q. Okay. Now the system itself, as I recall, had

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1 been in place since about 2004, spring of
 2 2004.
 3 MR. OTTENHEIMER:
 4 A. That's my understanding, yes.
 5 MS. NEWBURY:
 6 Q. Okay. So you were aware of that at the time.
 7 But this actual review of the Ventana system,
 8 according to this briefing note, would have
 9 occurred in July of 2005, so over a year after
 10 it had been in place.
 11 MR. OTTENHEIMER:
 12 A. Right.
 13 MS. NEWBURY:
 14 Q. And as I understand it, it was done to assist
 15 in the investigation of what had been
 16 discovered to be a problem with the ER/PR
 17 testing.
 18 MR. OTTENHEIMER:
 19 A. Correct.
 20 MS. NEWBURY:
 21 Q. Okay. So while you were familiar with
 22 Ventana, generally, you were not specifically
 23 made familiar with this particular report and
 24 investigation which occurred in July 2005.
 25 MR. OTTENHEIMER:

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1 A. Uh-hm.
 2 MS. NEWBURY:
 3 Q. In either July or August 2005.
 4 MR. OTTENHEIMER:
 5 A. As I recall.
 6 MS. NEWBURY:
 7 Q. Okay. And I haven't seen anything--
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 MS. NEWBURY:
 11 Q. --to suggest that someone else in your
 12 department knew about that in July or August.
 13 MR. OTTENHEIMER:
 14 A. Right.
 15 MS. NEWBURY:
 16 Q. And I just wonder if you had any recollection.
 17 MR. OTTENHEIMER:
 18 A. Not that I recall.
 19 MS. NEWBURY:
 20 Q. Or if you could point me somewhere else.
 21 MR. OTTENHEIMER:
 22 A. No.
 23 MS. NEWBURY:
 24 Q. Okay. Still staying with exhibit P-0124, and
 25 you been asked about this in some detail and I

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1 hope I won't repeat any questions. Page 10 is
 2 the December 5, 2005, briefing note for the
 3 department, for your department, and the
 4 question, "How did this happen?" Now just
 5 generally speaking, you were aware that an
 6 external peer review would be conducted by the
 7 Chief Pathologist--
 8 MR. OTTENHEIMER:
 9 A. Yes, I am.
 10 MS. NEWBURY:
 11 Q. --of the BC Cancer Institute and the Chief
 12 Technologist from Mount Sinai. Were you
 13 expecting that these reviews would provide an
 14 answer or answers to the question, "How did
 15 this happen?"
 16 MR. OTTENHEIMER:
 17 A. I would have anticipated that these reviews
 18 would certainly shed some light on this issue,
 19 yes.
 20 MS. NEWBURY:
 21 Q. Okay. And would you agree that that would
 22 probably be the most significant step in
 23 shedding light on the ER/PR problem?
 24 MR. OTTENHEIMER:
 25 A. Certainly amongst the more significant, yes.

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1 MS. NEWBURY:
 2 Q. Okay. Now you've indicated earlier that you
 3 didn't look for the reports or you weren't
 4 expecting the reports until the implementation
 5 process--or process, or phase, I think you
 6 called it, had been completed. And I'm not
 7 sure I understand what exactly was involved in
 8 the implementation process. What was being
 9 implemented?
 10 MR. OTTENHEIMER:
 11 A. I guess the recommendations and some of the
 12 suggested changes to the lab from a quality
 13 control or a quality assurance point of view.
 14 I guess, to be more specific, Eastern Health
 15 would be in a better position to exactly speak
 16 in detail as to the implementation stage, but
 17 I would think it would be along those lines
 18 that I've just discussed.
 19 MS. NEWBURY:
 20 Q. So it's implementing recommendations and
 21 implementing changes for quality purposes?
 22 MR. OTTENHEIMER:
 23 A. Sure. Yes.
 24 MS. NEWBURY:
 25 Q. Okay. And did you have a reason to believe in

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1 the fall of 2005 that it was necessary for the
 2 implementation stage or phase or process to be
 3 completed before the external consultants
 4 could answer the question, "How did this
 5 happen?"
 6 MR. OTTENHEIMER:
 7 A. As I mentioned in response to similar
 8 questions from Mr. Coffey and Mr. Simmons, it
 9 was my decision to wait until the process was
 10 completed in its entirety.
 11 MS. NEWBURY:
 12 Q. I understand that, but I want to explore
 13 whether or not you expected that the actual
 14 answer to the question - "How did this
 15 happen?" - could not be expected from the
 16 consultants until the implementation process
 17 was completed. Was there something about the
 18 implementation process that would inform the
 19 answer to that question?
 20 MR. OTTENHEIMER:
 21 A. It was my personal view that I wanted to see
 22 the exercise completed in its entirety.
 23 MS. NEWBURY:
 24 Q. But was there any reason that you had to
 25 believe--say, if you had a different view -

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1 MR. OTTENHEIMER:
 2 A. No, other--other than I wanted to see the
 3 process completed in its absolute entirety.
 4 MS. NEWBURY:
 5 Q. Okay. So there's no reason for you to believe
 6 that had you a different view, if you wanted
 7 to more interventionous --
 8 MR. OTTENHEIMER:
 9 A. Exactly.
 10 MS. NEWBURY:
 11 Q. --and find out from time to time how is it
 12 going, that they might actually have been able
 13 to answer that question earlier.
 14 MR. OTTENHEIMER:
 15 A. And in the absence of other phases being
 16 completed.
 17 MS. NEWBURY:
 18 Q. Right.
 19 MR. OTTENHEIMER:
 20 A. Right.
 21 MS. NEWBURY:
 22 Q. Yeah. So the implementation wasn't part of a-
 23 -sort of a trial in process. We'll try to
 24 figure out what's going on by implementing
 25 something.

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1 MR. OTTENHEIMER:
 2 A. Well, when you see reference to the fact that,
 3 upon conclusion of the implementation, there
 4 would be a further review and report back to
 5 Eastern Health, that tends to suggest for me
 6 that there--although there are separate
 7 phases, there is a complete package here and a
 8 final report to be completed and presumably to
 9 be presented. As I mentioned to Mr. Coffey,
 10 my anticipation was that the final report
 11 would be released and presented to me, as the
 12 Minister, and to the Department.
 13 MS. NEWBURY:
 14 Q. But would not that final report, after the
 15 implementation phase, possibly speak to
 16 whether or not the implementation of the
 17 recommendations was full, complete,
 18 successful?
 19 MR. OTTENHEIMER:
 20 A. I would anticipate that would be a part of it,
 21 I guess.
 22 MS. NEWBURY:
 23 Q. Okay. Would you consider it to be a
 24 significant milestone that external reviewers
 25 had sufficient information to commence the

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1 implementation phase?
 2 MR. OTTENHEIMER:
 3 A. You mean upon completion of all their work or
 4 during the process
 5 MS. NEWBURY:
 6 Q. No, immediately prior to the implementation of
 7 that next phase there, would you consider that
 8 to be a significant milestone? "We now have
 9 enough information that we have
 10 recommendations or suggested changes that we
 11 can now proceed to implement".
 12 MR. OTTENHEIMER:
 13 A. That would not be consistent with my view that
 14 there was a complete exercise that had to be
 15 completed and that that completion had not
 16 taken place.
 17 MS. NEWBURY:
 18 Q. Okay. So, you did not personally consider
 19 that to be a significant milestone?
 20 MR. OTTENHEIMER:
 21 A. That is correct.
 22 MS. NEWBURY:
 23 Q. I'd like to refer to Exhibit P-0154. Now,
 24 this document, I think, starting at page 2 has
 25 a question and answer briefing note for the

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1 Minister and I think it's a the end of the
 2 briefing note.
 3 THE COMMISSIONER:
 4 Q. Can we turn up there?
 5 MS. NEWBURY:
 6 Q. I believe so, yes, I do.
 7 THE COMMISSIONER:
 8 Q. Do you have a mouse in front of you?
 9 MS. NEWBURY:
 10 Q. I'm so used to not controlling it with Mr.
 11 Coffey at the helm. The second last paragraph
 12 there, it states that--I'll read the full
 13 second last paragraph. Actually, I'll start
 14 with the question. "Can the Minister ensure
 15 the public that this is not reflective of
 16 other unreliable methods of testing in the
 17 Province? Is our health system safe? Eastern
 18 Health responds successfully to the needs of
 19 thousands of patients in any one year.
 20 Furthermore, it has quality monitoring
 21 programs in place and has highly qualified,
 22 professional on staff. While regrettable, the
 23 fact that this situation was identified in the
 24 first place is reflective of the importance of
 25 quality in the organization. I am confident

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1 that this is not reflective of the services
 2 provided".
 3 Can you explain for me, what it means to
 4 says, "while regrettable, the fact that this
 5 situation was identified in the first place,
 6 is reflective of the importance of quality in
 7 the organization", what does that mean to you?
 8 MR. OTTENHEIMER:
 9 A. That is a reference to, a suggested answer and
 10 question that was done when? I'm just looking
 11 at the date here--on the 21st of November. I
 12 guess it makes some reference to the fact that
 13 reference to quality and the importance of
 14 quality, it says organization. So, I don't--
 15 it's difficult to really understand completely
 16 what is referred to here. This is one of the
 17 areas that, when we're talking about patient
 18 safety and minimizing risks to patients, has
 19 to be taken into account, presumably, when
 20 we're talking about quality control and
 21 quality assurance.
 22 THE COMMISSIONER:
 23 Q. I'm sorry to interrupt, but now that you raise
 24 this question, Mr. Ottenheimer, when I'm
 25 looking at these questions and answers -

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1 MR. OTTENHEIMER:
 2 A. Uh-hm.
 3 THE COMMISSIONER:
 4 Q. - there are so few questions that are really
 5 answered, that my question is, do they--are
 6 they really intended to answer.
 7 MR. OTTENHEIMER:
 8 A. I certainly think they're intended to answer,
 9 Madam Commissioner, but sometimes in looking
 10 at it and at first blush, I can understand
 11 that observation being made. I mean, the
 12 questions and answers often are completely
 13 unrelated.
 14 THE COMMISSIONER:
 15 Q. Well, let me put it this way, in your former
 16 profession and in my current one, if answers
 17 were like that all the time, then we'd never
 18 get -
 19 MR. OTTENHEIMER:
 20 A. No, they're certainly not the most
 21 appropriately drafted questions and answers
 22 that we've ever seen.
 23 THE COMMISSIONER:
 24 Q. Sorry Ms. Newbury.
 25 MS. NEWBURY:

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1 Q. Thank you. It indicates there in that one
 2 sentence the fact that this situation was
 3 identified in the first place is reflective of
 4 the importance of quality. Do you know if
 5 this is referring to what has been called the
 6 index case or the index patient?
 7 MR. OTTENHEIMER:
 8 A. I wouldn't know that, Ms. Newbury, I don't
 9 know.
 10 MS. NEWBURY:
 11 Q. Okay. Now, this note was intended for your
 12 benefit, I guess?
 13 MR. OTTENHEIMER:
 14 A. Yes, but I don't know specifically if that's
 15 the reference there.
 16 MS. NEWBURY:
 17 Q. Okay. And do you know the circumstances
 18 surrounding the index patient?
 19 MR. OTTENHEIMER:
 20 A. No, I do not.
 21 MS. NEWBURY:
 22 Q. Okay. And you still do not know that today?
 23 MR. OTTENHEIMER:
 24 A. I don't know the details surrounding that.
 25 The question was asked of me by Mr. Coffey

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1 during a previous meeting, the details
 2 surrounding that, I'm not familiar with.
 3 MS. NEWBURY:
 4 Q. And do you know if the details--do you know
 5 enough to know whether or not she had been,
 6 she'd learned of her possible problematic
 7 ER/PR result here in Eastern Health or if she
 8 heard it outside the jurisdiction?
 9 MR. OTTENHEIMER:
 10 A. As I recollect, I think the initial test, I
 11 think was done locally and I stand to be
 12 corrected, but a subsequent test done outside,
 13 but again, I can't speak specifically to that
 14 because I don't have that detail.
 15 MS. NEWBURY:
 16 Q. And you didn't know that certainly at the time
 17 of this briefing note?
 18 MR. OTTENHEIMER:
 19 A. I had no idea of that. In fact, that question
 20 was asked of me just several weeks ago for the
 21 first time.
 22 MS. NEWBURY:
 23 Q. Okay. Thank you, those are all the questions
 24 I have.
 25 MR. OTTENHEIMER:

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1 A. Thank you very much.
 2 THE COMMISSIONER:
 3 Q. Now, it's about time to break. Can I inquire
 4 as to the time required by others for
 5 completion with this witness, so we can see
 6 what we need. Ms. Taylor? I'm sorry, I've
 7 forgotten your name.
 8 MS. TAYLOR:
 9 Q. Ms. Taylor.
 10 THE COMMISSIONER:
 11 Q. Yes, Taylor, thank you.
 12 MS. TAYLOR:
 13 Q. I literally just need a few minutes.
 14 THE COMMISSIONER:
 15 Q. Okay, well, why don't we get your few minutes.
 16 MR. JOHN OTTENHEIMER, EXAMINATION BY MS. PAMELA TAYLOR
 17 MS. TAYLOR:
 18 Q. Good afternoon, Mr. Ottenheimer.
 19 MR. OTTENHEIMER:
 20 A. Good afternoon.
 21 MS. TAYLOR:
 22 Q. My name is Pam Taylor, I'm here on behalf of
 23 the Breast Cancer Testing Class Action Group.
 24 MR. OTTENHEIMER:
 25 A. Yes.

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1 MS. TAYLOR:
 2 Q. Now, last Monday Mr. Coffey had asked you
 3 about your understanding as to your authority
 4 as the Minister of Health in terms of your
 5 ability to give direction in an operational
 6 sense to a health authority, such as Eastern
 7 Health.
 8 MR. OTTENHEIMER:
 9 A. Uh-hm.
 10 MS. TAYLOR:
 11 Q. Now, I've looked at your transcripts, I'm
 12 going to paraphrase what you said and you can
 13 tell me if that is, in fact, your recollection
 14 of your evidence. You answered that you saw
 15 your role as Minister of Health in critical
 16 areas of public concern such as the ER/PR
 17 issue, as seeking and receiving the best
 18 possible professional medical advice that you
 19 could receive. Further you said that during
 20 the time that you first became aware of this
 21 issue, on July 19, '05, until you left the
 22 Department, March 13, '06, you would seek, ask
 23 for and receive the best possible medical,
 24 professional opinions and advice that were
 25 available.

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1 MR. OTTENHEIMER:
 2 A. Uh-hm.
 3 MS. TAYLOR:
 4 Q. That's correct?
 5 MR. OTTENHEIMER:
 6 A. Uh-hm.
 7 MS. TAYLOR:
 8 Q. Okay. Did you, at the time, seek a legal
 9 opinion or legal advice as to the Department
 10 of Health's responsibilities in a situation
 11 like this?
 12 MR. OTTENHEIMER:
 13 A. Well, there was--I know that question, similar
 14 question was raised last week from the point
 15 of the view of the Minister's legal authority.
 16 And I think that particular issue is now more
 17 clearly defined by legislation, I think, that
 18 was only proclaimed, literally a number of
 19 days ago. It is fair to say and I know I
 20 required some time in my own mind to answer
 21 that questions, looking for a statutory basis
 22 upon which the Minister has that authority.
 23 And in my own mind, I could not find that.
 24 However, clearly by virtue of the office, by
 25 virtue of the office in and of itself, is as

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1 far to say that, if a Minister feels that
 2 intervention is required, that that, in fact,
 3 can be done. On this particular issue, as
 4 I've mentioned on numerous occasions, in
 5 response to similar questions, I guess, I
 6 relied upon the expert advice and I relied
 7 upon the professional opinions that I
 8 received, from time to time, and it was upon
 9 that basis and reliance that I proceeded.
 10 MS. TAYLOR:
 11 Q. My question though is geared not just towards
 12 whether or not you had the authority to
 13 intervene -
 14 MR. OTTENHEIMER:
 15 A. Uh-hm.
 16 MS. TAYLOR:
 17 Q. - but even in order to inform yourself of when
 18 being given information from Eastern Health,
 19 in order for you to make a decision as
 20 Minister, on what you felt were the proper
 21 steps or what steps you'd want your department
 22 to take.
 23 MR. OTTENHEIMER:
 24 A. Uh-hm.
 25 MS. TAYLOR:

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1 Q. In that respect, did you seek any -
 2 MR. OTTENHEIMER:
 3 A. No.
 4 MS. TAYLOR:
 5 Q. - legal opinion or legal advice?
 6 MR. OTTENHEIMER:
 7 A. I did not seek legal opinion. I mean, this
 8 was a public policy issue. I had requested
 9 and received upon request, on a variety of
 10 occasions, opinions and information. And as
 11 Minister, I moved forward with that
 12 information having been provided to me.
 13 MS. TAYLOR:
 14 Q. Did you ever seek a legal opinion, legal
 15 advice with respect to Eastern Health's
 16 obligations in a situation like this? Again,
 17 in order to inform yourself when you were
 18 received information from Eastern Health -
 19 MR. OTTENHEIMER:
 20 A. Well, I was certainly aware -
 21 MS. TAYLOR:
 22 Q. - on what were the proper steps.
 23 MR. OTTENHEIMER:
 24 A. Yeah, I was certainly aware of the legislation
 25 with respect to the Regional Health Care

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1 Authorities because that legislation at the
 2 time had been relatively recent. I think only
 3 having been enacted, if I'm not mistaken, in
 4 April or May '05 or thereabouts. There's
 5 some--but I don't know the exact date--but
 6 specifically, in response to your question, I
 7 did not seek legal opinion with respect to the
 8 role of Eastern Health. They had work to do
 9 from an operational point of view and I relied
 10 upon their operational role as information was
 11 being provided to me.
 12 MS. TAYLOR:
 13 Q. And in terms of receiving the best possible
 14 medical professional opinion, even outside of
 15 legal advice, in terms of the medical
 16 information that you were relying on, did you
 17 seek any advice outside of that being provided
 18 form Eastern Health itself?
 19 MR. OTTENHEIMER:
 20 A. No, I did not.
 21 MS. TAYLOR:
 22 Q. Okay.
 23 MR. OTTENHEIMER:
 24 A. I relied on those individuals whom I regarded
 25 to be the top professionals and the

1 individuals who could provide information that
 2 would be of assistance to me and my officials
 3 as we move forward.
 4 MS. TAYLOR:
 5 Q. And this is the time period from when you
 6 first became aware of this issue up until the
 7 time that you left the department?
 8 MR. OTTENHEIMER:
 9 A. That is correct.
 10 MS. TAYLOR:
 11 Q. That's all for me, Mr. Ottenheimer. Thank
 12 you.
 13 MR. OTTENHEIMER:
 14 A. Thank you very much.
 15 THE COMMISSIONER:
 16 Q. Mr. Pike, is there anything that falls in your
 17 bailiwick in this -
 18 MR. PIKE:
 19 Q. I have no questions for Mr. Ottenheimer.
 20 THE COMMISSIONER:
 21 Q. All right, thank you. Mr. Pritchard, would
 22 you like to tell me how long? I'm assuming
 23 that you have some questions for Mr.
 24 Ottenheimer.
 25 MR. PRITCHARD:

1 Q. I will, Commissioner, only be half an hour.
 2 THE COMMISSIONER:
 3 Q. All right. So, in that case I'm afraid, Mr.
 4 Ottenheimer, we're going to ask you to come
 5 back in the morning, but on Mr. Pritchard's
 6 promise it isn't going to be that long, in any
 7 event. And I can't predict what Mr. Coffey
 8 may want to do at that point. So, we'll
 9 adjourn until 9:30 in the morning. Thank you,
 10 counsel.
 11 Upon conclusion.

1
 2
 3
 4 CERTIFICATE
 5
 6
 7 I, Judy Moss, hereby certify that the foregoing is
 8 a true and correct transcript in the matter of the
 9 Commission of Inquiry on Hormone Receptor Testing,
 10 heard on the 7th day of April, A.D., 2008 before
 11 the Honourable Justice Margaret A. Cameron,
 12 Commissioner, at the Commission of Inquiry, St.
 13 John's, Newfoundland and Labrador and was
 14 transcribed by me to the best of my ability by
 15 means of a sound apparatus.
 16
 17 Dated at St. John's, Newfoundland and Labrador
 18 this 7th day of April, A.D., 2008
 19
 20
 21
 22 Judy Moss

Inquiry on Hormone Receptor Testing

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