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COMMISSION OF INQUIRY  
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 8, 2008

Appearances:

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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-0166 THROUGH TO P-0198 . . . . . 12Pg.

EXHIBIT P-0314 . . . . . Pg. 191

TABLE OF CONTENTS

MR. JOHN OTTENHEIMER - RESUMES THE STAND

Examination by Mr. Rolf Pritchard . . . . . Pg 1 - 37

Re-examination by Bernard Coffey, Q.C. . . . . Pg. 37 - 69

Examination by Madam Commissioner . . . . . Pg. 69 - 77

MR. TOM OSBORNE

Examination by Bernard Coffey, Q.C. . . . . Pg. 77 - 300

Certificate

1 THE COMMISSIONER:

2 Q. Mr. Pritchard.

3 MR. PRITCHARD:

4 Q. Good morning, Justice Cameron. Good morning,

5 Mr. Ottenheimer.

6 MR. OTTENHEIMER:

7 Q. Good morning, Mr. Pritchard.

8 MR. PRITCHARD:

9 Q. This is my first crack at this mouse here, so

10 I’ll apologize in advance if I delete any

11 documents.

12 THE COMMISSIONER:

13 Q. I promise you the Registrar will not allow you

14 to do that.

15 MR. JOHN OTTENHEIMER, EXAMINATION BY MR. ROLF PRITCHARD

16 MR. PRITCHARD:

17 Q. That’s good, that’s good. Mr. Ottenheimer, I

18 just have a few questions arising from your

19 testimony. You commented yesterday that at

20 some of the meetings John Abbott attended

21 those, and that he was quiet during a lot of

22 those meetings. So I think your comment was

23 you weren’t really clear what his view was on

24 some of the issues at that time, is that

25 correct?

Page 5

1 MR. OTTENHEIMER:  
 2 A. Yeah, as I mentioned in the past, Mr.  
 3 Pritchard, I can be more certain of the views  
 4 of others at the meeting, but less certain of  
 5 the views of Mr. Abbott. Again as I  
 6 mentioned, we had a very good working  
 7 relationship I feel, but on that particular  
 8 point it's difficult for me to express exactly  
 9 what his view was.  
 10 MR. PRITCHARD:  
 11 Q. All right, and that really was my next  
 12 question, wondering how you would characterize  
 13 your working relationship with Mr. Abbott?  
 14 MR. OTTENHEIMER:  
 15 A. I would suggest a very cooperative one. He  
 16 had some experience in the past in the health  
 17 care sector, something that I personally did  
 18 not have upon arriving at the Department. In  
 19 fact, Mr. Abbott came to the Department of  
 20 Health and Community Services approximately  
 21 two months after I had been appointed  
 22 Minister, and I welcomed his arrival. As I  
 23 say, he had knowledge of health care and that  
 24 was helpful to me.  
 25 MR. PRITCHARD:

Page 6

1 Q. Okay, thank you. He was the Deputy throughout  
 2 the balance of your history?  
 3 MR. OTTENHEIMER:  
 4 A. Throughout my tenure as Minister of Health and  
 5 Community Services he was my Deputy upon his  
 6 arrival two months after my arrival.  
 7 MR. PRITCHARD:  
 8 Q. And during your comments on one of the earlier  
 9 days of your testimony, you made a comment  
 10 about -- you commented on the breadth of the  
 11 Department. You commented that -- I think you  
 12 said there were five or six ADMS?  
 13 MR. OTTENHEIMER:  
 14 A. Yes.  
 15 MR. PRITCHARD:  
 16 Q. And that prompted me to ask -- could you just  
 17 explain what the subdivisions are that warrant  
 18 five or six ADMS?  
 19 MR. OTTENHEIMER:  
 20 A. Yes. As I say, and as I've said repeatedly,  
 21 it's singularly the largest department in  
 22 government. It had a Division of Board  
 23 Services, Policy and Program Services,  
 24 Government and Agency Relations, Support  
 25 Services, Medical Services, and during my time

Page 7

1 in the Department we had some five to six  
 2 branches, usually under the leadership of an  
 3 Assistant Deputy Minister; Child Youth and  
 4 Family Services, for example. So the  
 5 Department was quite large and a lot of work  
 6 was taking place on a day to day basis.  
 7 MR. PRITCHARD:  
 8 Q. Okay, just -- I heard you say Board Services.  
 9 MR. OTTENHEIMER:  
 10 A. Uh-hm.  
 11 MR. PRITCHARD:  
 12 Q. I think we heard that the ADM for that was --  
 13 MR. OTTENHEIMER:  
 14 A. Yes, the ADM in that particular area was Moira  
 15 Hennessey, and again as I mentioned in the  
 16 past, she would often, I guess, request  
 17 information from the various health care  
 18 authorities for the benefit of -- retrieving  
 19 information for the benefit of the Department.  
 20 MR. PRITCHARD:  
 21 Q. And I think we heard that Dr. Hunt was also an  
 22 ADM?  
 23 MR. OTTENHEIMER:  
 24 A. Correct, he was an ADM in the area of Medical  
 25 Services.

Page 8

1 MR. PRITCHARD:  
 2 Q. Okay, and that leaves three other areas.  
 3 Policy and Program was one, is that correct?  
 4 MR. OTTENHEIMER:  
 5 A. Yes, there were three -- as I say, a number of  
 6 other areas and from time to time the ADM  
 7 would change depending on the division, I  
 8 guess. For example, Lynn Vivian Book acted as  
 9 an ADM during my period in the Department;  
 10 Loretta Chard -- there were a number of  
 11 individuals who carried out their role in an  
 12 official capacity in a department of that  
 13 size.  
 14 MR. PRITCHARD:  
 15 Q. And during the entire time that you were  
 16 Minister, was Moira Hennessey the Assistant  
 17 Deputy Minister responsible for Board  
 18 Services?  
 19 MR. OTTENHEIMER:  
 20 A. As I recall, yes.  
 21 MR. PRITCHARD:  
 22 Q. All right, and was Dr. Hunt responsible for  
 23 Medical Services?  
 24 MR. OTTENHEIMER:  
 25 A. If I recall, throughout that whole period of

Page 9

1 time.

2 MR. PRITCHARD:

3 Q. Okay. You described how the current Minister,

4 Ross Wiseman, was your Parliamentary Secretary

5 during the time that you were Minister of

6 Health and Community Services.

7 MR. OTTENHEIMER:

8 A. Yes.

9 MR. PRITCHARD:

10 Q. And I wasn't clear -- was he involved in the

11 ER/PR issue at all, did he sit in on any

12 meetings, or what if any involvement are you

13 aware of?

14 MR. OTTENHEIMER:

15 A. Not that I recall, Mr. Pritchard. Mr.

16 Wiseman, in his capacity as Parliamentary

17 Secretary, would often assist the Minister in

18 a legislative role in dealing with matters

19 that may come up in the House of Assembly. As

20 I mentioned in the past, he would often

21 represent me at a variety of speaking

22 engagements. The Department, being as large

23 as it is, it would be difficult to accept all

24 invitations personally and very often I would

25 ask Mr. Wiseman to represent the Minister,

Page 10

1 represent the Department at a public speaking

2 function, for example. I do recall

3 specifically that we had a new aging

4 initiative that was brought forward during my

5 tenure as Minister, and I specifically asked

6 Mr. Wiseman to assume leadership of that

7 particular program, which he willingly carried

8 out and, as I say, played a leadership role on

9 that particular front.

10 MR. PRITCHARD:

11 Q. Sure, and presumably -- we haven't seen his

12 name on any of them, but the various meetings

13 that we've talked about, July 21st, August

14 5th, and August 15th, he played no part at

15 those meetings?

16 MR. OTTENHEIMER:

17 A. I don't recall Mr. Wiseman being present at

18 those number of meetings that we've referred

19 to in the past.

20 MR. PRITCHARD:

21 Q. Now during the time that you were Minister,

22 obviously you had the occasion to deal with

23 Mr. George Tilley?

24 MR. OTTENHEIMER:

25 A. Uh-hm.

Page 11

1 MR. PRITCHARD:

2 Q. You've told us that you had lunch with him on

3 the 19th of July.

4 MR. OTTENHEIMER:

5 A. Uh-hm.

6 MR. PRITCHARD:

7 Q. How would you characterize your relationship

8 with Mr. Tilley?

9 MR. OTTENHEIMER:

10 A. Certainly cordial, and as I mentioned again in

11 past testimony, I did not know Mr. Tilley that

12 well personally, I knew him much more by

13 reputation. He too had a very strong history

14 in health care administration in the province.

15 I had a number of meetings with Mr. Tilley

16 throughout my tenure as Minister of Health and

17 Community Services, and according to the

18 documents that have been submitted as exhibits

19 in this inquiry, we can see that there were

20 some four or five meetings on this particular

21 issue alone involving -- a fairly large group,

22 but at least involving the presence of Mr.

23 Tilley as well. I have -- as I say, I

24 respected his input and he was a man of some

25 experience in the health care sector.

Page 12

1 MR. PRITCHARD:

2 Q. In terms of -- you mentioned that you had four

3 or five meetings with Mr. Tilley during the

4 course of this matter.

5 MR. OTTENHEIMER:

6 A. Uh-hm.

7 MR. PRITCHARD:

8 Q. But generally speaking, how often would you

9 say you met with him? Would that be a weekly

10 occurrence?

11 MR. OTTENHEIMER:

12 A. Not at all. I mean, Mr. Tilley, as the CEO of

13 Eastern Health, he assumed leadership over the

14 operational day to day matters revolving

15 around health care. The meetings with Mr.

16 Tilley, I would even suggest would be

17 infrequent. Having said that, I would think

18 that there would be much more frequent

19 discussion and contact between Mr. Tilley, for

20 example, and maybe the Deputy Minister, Mr.

21 Abbott, and perhaps some of the Assistant

22 Deputy Ministers, but my actual contact with

23 Mr. Tilley would be very limited.

24 MR. PRITCHARD:

25 Q. And you would also have spoken with him by

Page 13

1 phone from time to time?  
 2 MR. OTTENHEIMER:  
 3 A. I'm sure from time to time that may have  
 4 occurred, yes.  
 5 MR. PRITCHARD:  
 6 Q. And in terms of your communications with Mr.  
 7 Tilley, how would you characterize them? Were  
 8 you giving him direction, was he informing  
 9 you, what was the nature of these  
 10 communications?  
 11 MR. OTTENHEIMER:  
 12 A. It was always my view that I would be provided  
 13 and the Department would be provided with  
 14 information as supplied by Eastern Health for  
 15 the benefit of the Department. The  
 16 operational side of things, Mr. Pritchard, was  
 17 left to the day to day management and  
 18 leadership at Eastern Health. We would  
 19 request information and receive information,  
 20 which is essentially what occurred on this  
 21 ER/PR issue.  
 22 MR. PRITCHARD:  
 23 Q. And that approach that you've described, I  
 24 presume -- we've focused on Eastern Health and  
 25 spoken about Mr. Tilley, but presumably that

Page 14

1 would be the same for all the regional health  
 2 authorities, is that a fair statement?  
 3 MR. OTTENHEIMER:  
 4 A. That is correct. That is correct.  
 5 MR. PRITCHARD:  
 6 Q. Now in terms of the Board for Eastern Health,  
 7 who appoints the Board members?  
 8 MR. OTTENHEIMER:  
 9 A. In accordance with the legislation, the Board  
 10 is actually appointed by the Minister of the  
 11 day.  
 12 MR. PRITCHARD:  
 13 Q. Did you have occasion to exercise that  
 14 authority during the time that you were  
 15 Minister?  
 16 MR. OTTENHEIMER:  
 17 A. Yes, I did. We've discussed in the past that  
 18 it was during my time as Minister of Health  
 19 and Community Services the number of health  
 20 care authorities or health boards in the  
 21 province was reduced from fourteen to four,  
 22 and during that process it was important to  
 23 appoint members to the Governance Boards, and  
 24 I did play a role in that.  
 25 MR. PRITCHARD:

Page 15

1 Q. In terms of the control of the Department that  
 2 the Minister might exercise over the regional  
 3 health authorities, you appoint the board  
 4 members.  
 5 MR. OTTENHEIMER:  
 6 A. Uh-hm.  
 7 MR. PRITCHARD:  
 8 Q. Are there any other sort of brush-strokes  
 9 types of authority that could be exercised?  
 10 MR. OTTENHEIMER:  
 11 A. I guess the best answer to that question is in  
 12 the correspondence that was forwarded to the  
 13 Chairs of the four regional health care  
 14 authorities. Ms. Dawe referred to this in her  
 15 testimony a number of days ago. We would, for  
 16 example, expect an annual report defining the  
 17 roles and responsibilities, requesting a  
 18 strategic plan from the Board, the preparation  
 19 and monitoring of the annual balanced budget,  
 20 including appropriate policies. This was in  
 21 the correspondence, and this would be included  
 22 as an expectation of the Board in its  
 23 reporting to the Department, a health services  
 24 delivery plan, amongst a number of other  
 25 areas. So these sorts of expectations were

Page 16

1 certainly presented to the Board and we would  
 2 expect an accounting, I guess, Mr. Pritchard,  
 3 from the Board Chairs in a variety of areas  
 4 such as these.  
 5 MR. PRITCHARD:  
 6 Q. Okay. I want to go back to one of the  
 7 specific areas that you just mentioned. One  
 8 of them was the preparation and monitoring of  
 9 the balanced budget, you said.  
 10 MR. OTTENHEIMER:  
 11 A. Uh-hm.  
 12 MR. PRITCHARD:  
 13 Q. And perhaps you could just give me a little  
 14 more detail on that in terms of the budget  
 15 process and how that unfolds. Is that  
 16 something that the regional health authorities  
 17 comes and says "here's the budget, here's how  
 18 much money we want", or is there to and fro,  
 19 who controls that process?  
 20 MR. OTTENHEIMER:  
 21 A. There is a to and fro of sorts. I mean,  
 22 that's between the Board, and I'm sure the  
 23 Department. The executive side of the  
 24 Department would perhaps be in touch with the  
 25 Board in terms of responding to concerns or

Page 17

1 answering questions. So I'm sure that sort of  
 2 communication would take place in preparation  
 3 from a budgetary point of view.  
 4 MR. PRITCHARD:  
 5 Q. At the end of the day when it comes down to if  
 6 a particular item is going to be included in  
 7 the budget or not, who has the final say?  
 8 MR. OTTENHEIMER:  
 9 A. Well, of course, the Board -- there is a clear  
 10 indication here in this correspondence that  
 11 the Board would be accountable to the  
 12 Department in the preparation.  
 13 THE COMMISSIONER:  
 14 Q. I'm sorry, I didn't understand the answer to  
 15 the question, which I understood to be who  
 16 gets the final say. So are you saying the  
 17 Board gets the final say, the Department gets  
 18 the final say, the Minister of Finance gets  
 19 the final say or --  
 20 MR. OTTENHEIMER:  
 21 A. Well, as part of the budgetary process, the  
 22 Government, I guess, will ultimately have the  
 23 final say, but we would request, and one of  
 24 the requirements of the Health Care Authority  
 25 would be the account on an annual basis of the

Page 18

1 budgetary status of the Board.  
 2 MR. PRITCHARD:  
 3 Q. So at the end of the day if there's a  
 4 particular issue and there's a conflict on it,  
 5 or not able to reach an mutual decision, it's  
 6 the Government's decision --  
 7 MR. OTTENHEIMER:  
 8 A. Correct.  
 9 MR. PRITCHARD:  
 10 Q. It's the Department's decision on the budget,  
 11 if it's in or out?  
 12 MR. OTTENHEIMER:  
 13 A. Correct.  
 14 MR. PRITCHARD:  
 15 Q. And then at the end of the day, Eastern Health  
 16 or the various regional health authorities are  
 17 accountable back to you as Minister for the  
 18 budget?  
 19 MR. OTTENHEIMER:  
 20 A. Correct.  
 21 MR. PRITCHARD:  
 22 Q. On the issue of finances and so forth, you  
 23 commented a few times that you had asked at  
 24 one of the meetings if this was a resource  
 25 issue?

Page 19

1 MR. OTTENHEIMER:  
 2 A. Uh-hm.  
 3 MR. PRITCHARD:  
 4 Q. And I think we were all satisfied that that  
 5 meant a financial issue?  
 6 MR. OTTENHEIMER:  
 7 A. Uh-hm.  
 8 MR. PRITCHARD:  
 9 Q. And you were told that it was not?  
 10 MR. OTTENHEIMER:  
 11 A. Uh-hm.  
 12 MR. PRITCHARD:  
 13 Q. Now let's speculate. If they had come back  
 14 and said to you, "Yes, it is a resource  
 15 issue", what if anything might have resulted  
 16 from that?  
 17 MR. OTTENHEIMER:  
 18 A. If, in fact, and you're right, that question  
 19 was asked, I remember specifically asking that  
 20 question, "Is this a resource issue, is there  
 21 something that we can do from a monetary point  
 22 of view". The response was clear to me at  
 23 that time that it was not a resource issue.  
 24 If, in fact, it was made clear that it was a  
 25 resource issue, I would certainly take it upon

Page 20

1 myself, perhaps in conjunction with the Deputy  
 2 Minister to immediately address the concern  
 3 with Treasury Board, for example, to see if we  
 4 can give some immediate resolution and some  
 5 immediate allowance to offset the problem that  
 6 had been identified.  
 7 MR. PRITCHARD:  
 8 Q. And these events, you became aware of these  
 9 events in July.  
 10 MR. OTTENHEIMER:  
 11 A. Uh-hm.  
 12 MR. PRITCHARD:  
 13 Q. And, of course, the budget year is, I guess,  
 14 April 1st to March 31st?  
 15 MR. OTTENHEIMER:  
 16 A. Yes.  
 17 MR. PRITCHARD:  
 18 Q. So you're right in the middle of a budget  
 19 year. Notwithstanding that you're in the  
 20 middle of a budget year, the Minister has that  
 21 kind of authority?  
 22 MR. OTTENHEIMER:  
 23 A. Certainly a request would be made. There's no  
 24 question about that. If it was clearly  
 25 recognized that we have a critical issue and

Page 21

1 financial resources would be required, I would  
 2 certainly make that recommendation on behalf  
 3 of the Department, yes.  
 4 MR. PRITCHARD:  
 5 Q. One of the questions you were asked was  
 6 whether or not you had ever considered the  
 7 fact that the people advising you on this  
 8 issue from Eastern Health, if you had ever  
 9 considered whether or not there might be a  
 10 conflict of interest in terms of the advice  
 11 that you were being given.  
 12 MR. OTTENHEIMER:  
 13 A. Uh-hm.  
 14 MR. PRITCHARD:  
 15 Q. And I wasn't clear on your answer to that, so  
 16 I'm going to pose that question to you again,  
 17 if that was something you had ever considered?  
 18 MR. OTTENHEIMER:  
 19 A. It was not an issue that had crossed my mind.  
 20 As I suggested in previous testimony, we are  
 21 dealing with some top experts in this field in  
 22 the province, people of significant  
 23 reputation, highly regarded respected  
 24 individuals, and I certainly did not address  
 25 my mind to the fact that conflict of interest

Page 22

1 should be a consideration here. I mean, these  
 2 are individuals who presumably at all times  
 3 uppermost in their minds would be the  
 4 physician/patient relationship, acting in  
 5 accordance with what is in their best  
 6 interest, and it was that view and expert  
 7 opinion and professional opinion that guided  
 8 me throughout my discussions with Eastern  
 9 Health throughout that time.  
 10 MR. PRITCHARD:  
 11 Q. Would it be fair to say that you trusted those  
 12 individuals?  
 13 MR. OTTENHEIMER:  
 14 A. Yes.  
 15 MR. PRITCHARD:  
 16 Q. And would it be fair to say that you trusted  
 17 Mr. Tilley?  
 18 MR. OTTENHEIMER:  
 19 A. Yes.  
 20 MR. PRITCHARD:  
 21 Q. And had any of those individuals, and even  
 22 speaking more broadly, had Eastern Health as  
 23 an organization, the Eastern Regional Health  
 24 Authority prior to this event given you any  
 25 reason not to trust them?

Page 23

1 MR. OTTENHEIMER:  
 2 A. I relied, Mr. Pritchard, on their advice and  
 3 their professional opinion.  
 4 THE COMMISSIONER:  
 5 Q. Mr. Ottenheimer, I think the question was  
 6 whether or not your past experience with  
 7 Eastern Health had given you any reason to not  
 8 trust that organization?  
 9 MR. OTTENHEIMER:  
 10 A. Madam Commissioner, no, I had no reason.  
 11 THE COMMISSIONER:  
 12 Q. I recognize your past experience would have  
 13 been limited at that point, you were only in  
 14 the position for a couple of months.  
 15 MR. OTTENHEIMER:  
 16 A. Yes. No, Madam Commissioner, I certainly had  
 17 on reason to mistrust that organization or not  
 18 treat as serious, I guess, the point of view  
 19 as expressed.  
 20 MR. PRITCHARD:  
 21 Q. Madam Registrar, I wonder if you could call up  
 22 Document P-0305. Mr. Ottenheimer, you have it  
 23 there on your screen, do you?  
 24 MR. OTTENHEIMER:  
 25 A. Yes.

Page 24

1 MR. PRITCHARD:  
 2 Q. It's a document dated August 16th, 2005.  
 3 MR. OTTENHEIMER:  
 4 A. Uh-hm.  
 5 MR. PRITCHARD:  
 6 Q. And it's from a person employed by Health and  
 7 Community Services, Bev Griffiths, to George  
 8 Tilley. She's sending a number of e-mails on  
 9 to George Tilley at the request of John  
 10 Abbott, and so within that, I guess, is nested  
 11 another e-mail which is somewhat earlier and  
 12 appears to be July 25th, and she inquires --  
 13 she says, "Anything new on the ER/PR  
 14 receptors. The Minister was quite keen on  
 15 this matter".  
 16 MR. OTTENHEIMER:  
 17 A. Uh-hm.  
 18 MR. PRITCHARD:  
 19 Q. So that's three or four days after the meeting  
 20 of the 21st. Do you have any recollection of  
 21 -- was that a correct characterization, is  
 22 there something that happened on that day that  
 23 might have triggered --  
 24 MR. OTTENHEIMER:  
 25 A. There's no question that this issue was an

Page 25

1 important issue for me as Minister. I felt  
 2 that I had to be briefed on a regular basis,  
 3 that this situation had to be monitored on a  
 4 regular basis. The original information was  
 5 provided to me by Mr. Tilley on the 19th of  
 6 July, we had the full briefing on the 21st of  
 7 July, a subsequent briefing on the 5th of  
 8 August, a follow up briefing on the 15th of  
 9 August, a full briefing once again in  
 10 preparation for the House of Assembly on the  
 11 17th of November, and briefing notes being  
 12 provided me from time to time throughout that  
 13 particular period of time. So I'm not  
 14 surprised to see that reference because I  
 15 think it was, you know, widely known in the  
 16 Department that this was an issue that clearly  
 17 was important to me.

18 MR. PRITCHARD:  
 19 Q. You were questioned at some length yesterday  
 20 about the meeting on the 19th.

21 MR. OTTENHEIMER:  
 22 A. Uh-hm.

23 MR. PRITCHARD:  
 24 Q. And I don't think there's any doubt that there  
 25 was some meeting or call or something on the

Page 26

1 19th, but there was some question if it was a  
 2 phone call or a meeting. Reflecting on that  
 3 overnight, do you have any clearer  
 4 recollection, are you able to assist us with  
 5 that?

6 MR. OTTENHEIMER:  
 7 A. I know Mr. Simmons raised that issue  
 8 yesterday. Going by my own calendar that day,  
 9 it clearly says a lunch meeting. I've made it  
 10 clear, I think, in the testimony that it may  
 11 have taken place in the boardroom, in my  
 12 office, outside of the Department; I cannot be  
 13 absolutely sure, but clearly there was some  
 14 contact on the 19th, and I was introduced for  
 15 the first time on this ER/PR issue on the  
 16 19th, followed by a full briefing on the 21st.

17 MR. PRITCHARD:  
 18 Q. Okay.

19 MR. OTTENHEIMER:  
 20 A. But exactly where that contact took place or  
 21 the manner of the contact, I cannot be 100  
 22 percent sure, but I'm sure that there was  
 23 information that was shared with me on the  
 24 19th.

25 MR. PRITCHARD:

Page 27

1 Q. But just to be absolutely clear, when you say  
 2 you're unsure about the manner of the contact,  
 3 are you saying that it could have been a phone  
 4 call?

5 MR. OTTENHEIMER:  
 6 A. It is, I suppose, not impossible, and looking  
 7 at the calendar of some three years ago, it  
 8 says a lunch meeting. As I say, that could be  
 9 a sandwich in a boardroom in my office or in  
 10 the office itself. It cannot be ruled out  
 11 absolutely, but my own calendar at that time  
 12 says a lunch meeting.

13 MR. PRITCHARD:  
 14 Q. Now yesterday during the course of some of  
 15 your cross-examination, you had asked for a  
 16 particular document to be put up and it was  
 17 suggested it might be more appropriate for  
 18 that to be put up later, so I'm going to ask  
 19 that document be called up now. It was P-  
 20 0074, and P-0074 is an e-mail from July 20th  
 21 between Joan Dawe and George Tilley, copied to  
 22 others. You had asked to have that put up  
 23 again, so perhaps you'd like to scan down  
 24 through that and I'd invite you to make  
 25 whatever comment it was that you wished to

Page 28

1 make yesterday on that?

2 MR. OTTENHEIMER:  
 3 A. I guess the reference in that correspondence,  
 4 Mr. Pritchard, which is of particular interest  
 5 to me as the Minister is that it shows clearly  
 6 a position that I expressed and a belief that  
 7 I had from day one, and I guess it's the very  
 8 beginning of the second paragraph where Mr.  
 9 Tilley says, "I have been in touch with the  
 10 Minister, who is edging us to go public as  
 11 soon as possible". That, Mr. Pritchard, is  
 12 the position that I maintained from the very  
 13 beginning, and one that I maintained  
 14 throughout.

15 MR. PRITCHARD:  
 16 Q. Perhaps that sentence also gives a clue where  
 17 Mr. Tilley references being in touch with the  
 18 Minister, that perhaps it was a phone call.

19 MR. OTTENHEIMER:  
 20 A. It is possible, it is, and I haven't ruled  
 21 that out completely, but again I have to rely  
 22 on the calendar -- the official calendar that  
 23 day which states something otherwise, but  
 24 clearly there was contact, clearly there was a  
 25 discussion.

Page 29

1 MR. PRITCHARD:  
 2 Q. Mr. Ottenheimer, yesterday you were asked a  
 3 lot of questions about the different meetings  
 4 that took place on the 21st, August 5th, and  
 5 15th, and what may have transpired and how  
 6 things evolved.  
 7 MR. OTTENHEIMER:  
 8 A. Uh-hm.  
 9 MR. PRITCHARD:  
 10 Q. And one of the statements you made yesterday,  
 11 you characterized the meetings a certain way.  
 12 You said that they weren't seeking your  
 13 direction, rather they were providing you with  
 14 information. I wonder if you could just  
 15 explain that point of view?  
 16 MR. OTTENHEIMER:  
 17 A. From meeting to meeting Eastern Health and  
 18 their officials or their medical personnel  
 19 would discuss a variety of topics, depending,  
 20 I guess, on the meeting and the date of the  
 21 meeting, and it would be an information-  
 22 gathering exercise from the Department's point  
 23 of view. I mean, I wished to be briefed on  
 24 this important matter. And as I've mentioned  
 25 earlier, this was requested and was done on a

Page 30

1 relatively regular basis.  
 2 MR. PRITCHARD:  
 3 Q. Okay. And there was some discussion yesterday  
 4 that in terms of the decision making process  
 5 that may have been protracted over a number of  
 6 meetings, a decision may not have been made on  
 7 the 21st what to do about disclosure, that may  
 8 have happened later, that may have been an  
 9 evolving process. But in terms of your point  
 10 of view, did that change over that period of  
 11 time, from the 21st to August 5th, August  
 12 15th?  
 13 MR. OTTENHEIMER:  
 14 A. My point of view, Mr. Pritchard, never did  
 15 change. And we have the reference here of  
 16 July the 20th and it's repeated in Dr.  
 17 Williams' handwritten notes of August 15th,  
 18 almost a month later. I believe these two  
 19 pieces of documents or these two pieces of--  
 20 these two exhibits clearly reflect my view on  
 21 the issue of public notice.  
 22 MR. PRITCHARD:  
 23 Q. Okay. I'd like to ask that Mr. Ottenheimer  
 24 now be shown Exhibit P-0304? Mr. Ottenheimer,  
 25 this is a memo, and I just want to--my

Page 31

1 understanding this is a draft memo, not a  
 2 final memo, it's something that was drafted  
 3 and there is a subsequent version that is  
 4 different than this. This was drafted on July  
 5 21st, 2005 and it appears to have been drafted  
 6 in the wake of the meeting that Mr. Tilley and  
 7 Ms. Bonnell and others had with you that's  
 8 been described to us on the 21st. And we see  
 9 that it says, "Certainly have some concerns  
 10 following the meeting this morning re public  
 11 disclosure." And if we just skip down now to  
 12 the bottom of that page, there's a statement  
 13 in the last bullet on the first page, thank  
 14 you, it says, "A full public disclosure with"-  
 15 -okay, there we go. Perfect. Do you have  
 16 your hand on the mouse?  
 17 MR. OTTENHEIMER:  
 18 A. Yes, I do, yeah.  
 19 MR. PRITCHARD:  
 20 Q. All right. Okay. It's the last bullet. Mr.  
 21 Ottenheimer, that's good. I'll just get you  
 22 to leave that exactly where it is. Thank you.  
 23 There's a bullet at the bottom of this draft  
 24 document, it says, "A full public disclosure  
 25 with a press conference, 1-800 information

Page 32

1 line, letters to all impacted patients and  
 2 supportive ministerial comment would not be my  
 3 choice in this case." So someone is recording  
 4 their thoughts after the meeting.  
 5 MR. OTTENHEIMER:  
 6 A. Um-hm.  
 7 MR. PRITCHARD:  
 8 Q. Susan Bonnell. And my question is, is that a  
 9 sentiment that was expressed to you, do you  
 10 recall it being expressed to you on July 21st?  
 11 MR. OTTENHEIMER:  
 12 A. It was certainly part of the discussion, which  
 13 is why, I guess, subsequent to this Eastern  
 14 Health maintained its position throughout in  
 15 terms of public disclosure. But again, this  
 16 would be contrary to my own personal view and  
 17 that I'm sure my own personal view was shared  
 18 with them at that time.  
 19 MR. PRITCHARD:  
 20 Q. Now, one of the issues that arose in cross-  
 21 examination yesterday was this point that one  
 22 of the difficulties that was raised or foresee  
 23 with an early disclosure was that there might  
 24 be some concern around less complete  
 25 information or going public and having a--not



Page 33

1 having the full story, this is one of the  
 2 sentiments that was expressed. And I believe  
 3 your response was something that not that you  
 4 didn't care, but you didn't think that was the  
 5 most pressing concern?  
 6 MR. OTTENHEIMER:  
 7 A. Um-hm.  
 8 MR. PRITCHARD:  
 9 Q. Can you just explain your view on that,  
 10 please?  
 11 MR. OTTENHEIMER:  
 12 A. I was of the view that this information should  
 13 be made public as soon as possible. I  
 14 appreciate Eastern Health's own position on  
 15 this, that in the absence of significant  
 16 information it's difficult to know what to  
 17 day. However, even with limited information  
 18 it seemed to me, on balance, it is best to  
 19 share that information, and again, it allows  
 20 the individual patient to respond to her or  
 21 his own personal health concerns  
 22 appropriately.  
 23 MR. PRITCHARD:  
 24 Q. Mr. Ottenheimer, you've answered a lot of  
 25 questions the last few days. I wonder at this

Page 34

1 point if there's anything that you would like  
 2 to say?  
 3 MR. OTTENHEIMER:  
 4 A. Yes, I would, Madam Commissioner, if I may?  
 5 THE COMMISSIONER:  
 6 Q. Yes.  
 7 MR. OTTENHEIMER:  
 8 A. I have a very brief statement that I would  
 9 like to share, if I may, at this time.  
 10 THE COMMISSIONER:  
 11 Q. Yes, yes, do that.  
 12 MR. OTTENHEIMER:  
 13 A. Thank you. "To cancer patients and families  
 14 of cancer patients. It is important for me to  
 15 be part of this process and I am glad I have  
 16 had the opportunity to provide some  
 17 information to this Inquiry. I have attempted  
 18 to share with you my thoughts and beliefs to  
 19 the best of my ability and recollection  
 20 surrounding the events of this most difficult  
 21 time on everyone. Throughout the time in  
 22 question uppermost in my mind at all times was  
 23 the issue of patient safety and minimizing  
 24 risk to you, the cancer patients. The  
 25 decisions that I made were a direct result of

Page 35

1 the best professional and expert medical  
 2 advise that was provided to me. My decisions  
 3 were guided by that and that only. After a  
 4 careful review of all the facts and all the  
 5 testimony this Commission will undoubtedly  
 6 come to understand the vast complexities of  
 7 this most tragic event, all the factors  
 8 contributing to its occurrence and ways to  
 9 prevent it from ever occurring again. It is  
 10 my hope that this process will not only serve  
 11 as a model for our own province but for other  
 12 Canadian jurisdictions and perhaps  
 13 internationally as well. In my capacity as  
 14 the Minister of Health and Community Services  
 15 I have had the opportunity to proudly serve  
 16 the people of Newfoundland and Labrador. This  
 17 was an honour that was given to me by our  
 18 Premier and I thank him for that. To the  
 19 patients and to the families who have been  
 20 directly impacted in your personal lives, my  
 21 thoughts and my prayers are with you." Thank  
 22 you, Madam Commissioner.  
 23 MR. PRITCHARD:  
 24 Q. Thank you, Mr. Ottenheimer. Those are all my  
 25 questions.

Page 36

1 THE COMMISSIONER:  
 2 Q. Anything arising, Mr. Coffey?  
 3 COFFEY, Q.C.:  
 4 Q. Yes, I do have some arising.  
 5 THE COMMISSIONER:  
 6 Q. While Mr. Coffey is coming around, Mr.  
 7 Ottenheimer, there was a point that I think I  
 8 need a little clarification on. Last, I was  
 9 going to say last week, but I guess now it's  
 10 the week before last, Mrs. Dawe was here as  
 11 Chair of the Board of Eastern Health and one  
 12 of the things that she said in her evidence,  
 13 or at least I understood from her evidence,  
 14 was that while the legislation which has just  
 15 recently been proclaimed was not then  
 16 operative and that essentially the Board acted  
 17 as if it was. And I noticed in that letter  
 18 that you referred to earlier, that's P-0099,  
 19 that that refers to the then operating  
 20 Hospitals Act, which certainly we would  
 21 probably assume would be the legal position.  
 22 Do you recall advising the boards or having a  
 23 discussion with the boards about operation as  
 24 the new legislation was in effect or operating  
 25 under the old Act, anything of that nature?

Page 37

1 MR. OTTENHEIMER:  
 2 A. There may have been discussion, obviously,  
 3 Madam Commissioner, with the Department. In  
 4 the case of Eastern Health we had the benefit  
 5 of a strong Chair in that of Joan Dawe, who  
 6 had been previously the Deputy Minister of  
 7 Health for a number of years in that  
 8 department. That discussion, I do not recall  
 9 specifically. However, I know she requested  
 10 the correspondence that you have referred to  
 11 and that may have allowed her to have a  
 12 greater understanding of the relationship, I  
 13 guess, which she could then in turn share with  
 14 the members of her Board.  
 15 THE COMMISSIONER:  
 16 Q. Mr. Coffey?  
 17 MR. JOHN OTTENHEIMER, RE-EXAMINATION BY BERNARD COFFEY,  
 18 Q.C.  
 19 COFFEY, Q.C.:  
 20 Q. Yes, thank you, Commissioner. Mr.  
 21 Ottenheimer, twice while other counsel were,  
 22 yesterday were, I believe twice while you were  
 23 being asked a question you referred to the  
 24 ER/PR as a public policy issue. Of course,  
 25 that would be presumably in contradistinction

Page 38

1 to it being an operational issue?  
 2 MR. OTTENHEIMER:  
 3 A. Um-hm.  
 4 COFFEY, Q.C.:  
 5 Q. And you were being briefed because it was a  
 6 public policy issue?  
 7 MR. OTTENHEIMER:  
 8 A. No, I'd like to clarify that. I mean, in terms  
 9 of the response it was clearly an operational  
 10 issue, but it was certainly a public health  
 11 issue. I mean, when I became aware of the  
 12 fact that, you know, this tragic set of  
 13 circumstances had occurred, it was very much,  
 14 in my mind, a critical public health issue.  
 15 And that is the context that I certainly had  
 16 intended in my previous answers.  
 17 COFFEY, Q.C.:  
 18 Q. Sir, just on the point of communication  
 19 between the Department and yourself or your  
 20 office, as Minister when you occupied that,  
 21 what was your understanding about how someone  
 22 like George Tilley, a CEO, would be able to  
 23 identify or recognize what sorts of  
 24 information his organization should send to  
 25 the Department but which the Department had

Page 39

1 not asked for? And in this context, for  
 2 example, those two reports.  
 3 MR. OTTENHEIMER:  
 4 A. Um-hm, um-hm. But, of course, it's in the  
 5 context -  
 6 COFFEY, Q.C.:  
 7 Q. But was there any kind of guideline or  
 8 understanding or -  
 9 MR. OTTENHEIMER:  
 10 A. There are two, two thoughts that come to mind,  
 11 Mr. Coffey. One is discussions that may take  
 12 place on a frequent basis between the Deputy  
 13 and Mr. Tilley and presumably the  
 14 communications officers both at the Department  
 15 and at Eastern Health. And there may well  
 16 have been discussions, ongoing discussions on  
 17 topics, of course, that I may not necessarily  
 18 be familiar with. But in terms of the  
 19 providing of information to the Department, I  
 20 would think at the Deputy Minister level or at  
 21 the leave of the Director of Communications,  
 22 either of those would be a mechanism that  
 23 could be used.  
 24 COFFEY, Q.C.:  
 25 Q. I appreciate the mechanism, but how would--you

Page 40

1 know, what was your understanding of how  
 2 someone such as George Tilley or his VPs would  
 3 know that, without them having being asked to  
 4 send the information, how would they know that  
 5 this particular piece of information should be  
 6 communicated?  
 7 MR. OTTENHEIMER:  
 8 A. What we do know is, in terms of one of the  
 9 exhibits, that there was a request by the  
 10 assistant -  
 11 COFFEY, Q.C.:  
 12 Q. Moira -  
 13 MR. OTTENHEIMER:  
 14 A. Yes. By the assistant -  
 15 COFFEY, Q.C.:  
 16 Q. Moira Hennessey?  
 17 MR. OTTENHEIMER:  
 18 A. By an assistant deputy minister. And again,  
 19 it has to be placed in the context of that  
 20 time, Mr. Coffey.  
 21 COFFEY, Q.C.:  
 22 Q. Sure. So -  
 23 MR. OTTENHEIMER:  
 24 A. It's very easy for us three years after the  
 25 fact to assess and analyze a set of

Page 41

1 circumstances. However, at that time and in  
 2 the context of that time period, as I said to  
 3 you yesterday in response to that issue, I had  
 4 chosen to allow this exercise to complete.  
 5 However, in direct response to your question  
 6 there, in fact, was a request by the Assistant  
 7 Deputy Minister.  
 8 COFFEY, Q.C.:  
 9 Q. Okay. In fact, I've had the opportunity to  
 10 check the transcript of what you told us the  
 11 first day you testified, and toward the end of  
 12 the day, in fact, you indicated that you  
 13 thought that it was probable that you had  
 14 asked Moira Hennessey to make that request.  
 15 MR. OTTENHEIMER:  
 16 A. It is, and I certainly can't rule that out.  
 17 She may have done that on her own accord.  
 18 COFFEY, Q.C.:  
 19 Q. Okay.  
 20 MR. OTTENHEIMER:  
 21 A. She may have indicated to me that she was in  
 22 the process of doing that. In the course of  
 23 the day-to-day executive position of the  
 24 office of the Ministry of Health, it's just  
 25 very difficult to remember exact details such

Page 42

1 as that.  
 2 COFFEY, Q.C.:  
 3 Q. So that your decision then, just so I'm clear,  
 4 your decision then to not find out what was in  
 5 those reports must have occurred after Moira  
 6 asked for them at some point after?  
 7 MR. OTTENHEIMER:  
 8 A. I was satisfied in my own mind, at that time,  
 9 to allow the, to allow that particular  
 10 exercise to have been completed.  
 11 COFFEY, Q.C.:  
 12 Q. Okay.  
 13 MR. OTTENHEIMER:  
 14 A. As I said yesterday.  
 15 COFFEY, Q.C.:  
 16 Q. Now, Mr. Browne asked you and he pointed you  
 17 to Exhibit, I'll just get it out here,  
 18 Commissioner, it's Exhibit--yes, I have it  
 19 here, thank you. It's Exhibit P-0161. It's -  
 20 MR. BROWNE:  
 21 Q. Page 25.  
 22 COFFEY, Q.C.:  
 23 Q. Page 25.  
 24 THE COMMISSIONER:  
 25 Q. Thank you, Mr. Browne.

Page 43

1 COFFEY, Q.C.:  
 2 Q. And it's the top right-hand side of the page.  
 3 Thank you. And this deals with multi-patient  
 4 disclosure. And of course, I gather, this is  
 5 a matter of public record. This document was  
 6 not published until a month or two ago, I  
 7 gather, or certainly relatively recently. Mr.  
 8 Browne asked you some questions about what is  
 9 indicated there. What was your understanding  
 10 at the time, in the summer and then fall of  
 11 '05, and in fact, in early '06, as to how the  
 12 patients were being communicated with? Like  
 13 who was doing the communicating, in terms of  
 14 from what you understood, and how was it being  
 15 accomplished, particularly in terms of the  
 16 retest results?  
 17 MR. OTTENHEIMER:  
 18 A. That, it was my understanding at that time,  
 19 Mr. Coffey, that Eastern Health, upon receipt  
 20 of the retesting results, would notify the  
 21 patients.  
 22 COFFEY, Q.C.:  
 23 Q. But how?  
 24 MR. OTTENHEIMER:  
 25 A. That would be done by information going to the

Page 44

1 physician and the physician making contact.  
 2 COFFEY, Q.C.:  
 3 Q. Okay, so that was what you were given to  
 4 understand. I'm not suggesting you weren't,  
 5 I'm just--that was your understanding, that  
 6 the physicians would actually be involved in  
 7 communicating it?  
 8 MR. OTTENHEIMER:  
 9 A. There was a time period when that was the  
 10 process that was used, exactly what that time  
 11 period was, I cannot recall, but there was a  
 12 time period when that process was used, to my  
 13 understanding.  
 14 COFFEY, Q.C.:  
 15 Q. Did it ever change?  
 16 MR. OTTENHEIMER:  
 17 A. There was some reference, as well, to a board  
 18 having been established at Eastern Health and  
 19 they too would play a role in notification to  
 20 patients. Again, the actual date of that, I'm  
 21 not familiar with.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. And that board, in fact, I take it, was  
 24 primarily comprised of physicians?  
 25 MR. OTTENHEIMER:

Page 45

1 A. Correct.  
 2 COFFEY, Q.C.:  
 3 Q. That was your understanding?  
 4 MR. OTTENHEIMER:  
 5 A. Correct.  
 6 COFFEY, Q.C.:  
 7 Q. So effectively it would again be physicians?  
 8 MR. OTTENHEIMER:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Doing the communicating. Anything else, any  
 12 other method that comes to mind?  
 13 MR. OTTENHEIMER:  
 14 A. Well, of course, there was a fairly  
 15 significant public relations exercise that had  
 16 taken place after -  
 17 COFFEY, Q.C.:  
 18 Q. But I'm talking about the actual results for  
 19 individual patients, that's what I'm talking  
 20 about. I appreciate that there was a big, you  
 21 know, campaign, communications campaign, but  
 22 in terms of dealing with it, that was your  
 23 primary concern was the individual patients?  
 24 MR. OTTENHEIMER:  
 25 A. Yes.

Page 46

1 COFFEY, Q.C.:  
 2 Q. Mr. Browne had pointed you to this page 25  
 3 here.  
 4 MR. OTTENHEIMER:  
 5 A. Um-hm.  
 6 COFFEY, Q.C.:  
 7 Q. And certainly when you read this, you know,  
 8 one might very well assume that it would  
 9 involve disclosure by clinicians, ie,  
 10 physicians and their individual patients?  
 11 MR. OTTENHEIMER:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. So and that was your understanding at the  
 15 time?  
 16 MR. OTTENHEIMER:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. So no one ever advised you, and I'm not  
 20 suggesting they did, I'm just asking you,  
 21 okay.  
 22 MR. OTTENHEIMER:  
 23 A. Um-hm.  
 24 COFFEY, Q.C.:  
 25 Q. No one ever advised you that for more than

Page 47

1 half the patients retested, or certainly  
 2 approximately half, they got a phone call  
 3 from, not from a physician at all?  
 4 MR. OTTENHEIMER:  
 5 A. Um-hm.  
 6 COFFEY, Q.C.:  
 7 Q. And they were advised of the results.  
 8 MR. OTTENHEIMER:  
 9 A. No, no, I -  
 10 COFFEY, Q.C.:  
 11 Q. Were you aware of that, that that was -  
 12 MR. OTTENHEIMER:  
 13 A. I am aware. In fact, I think the briefing  
 14 note of November the 17th there is some  
 15 reference to the fact that where it was not  
 16 possible to make contact that other attempts  
 17 at information were being used. So, no, I--  
 18 three years after the fact, two years after  
 19 the fact I am aware that that, in fact, took  
 20 place, yes.  
 21 COFFEY, Q.C.:  
 22 Q. But at the time were you aware that for many  
 23 patients, patients who came back, they're  
 24 confirmed negative.  
 25 MR. OTTENHEIMER:

Page 48

1 A. Um-hm.  
 2 COFFEY, Q.C.:  
 3 Q. There were just phone calls being made to  
 4 them?  
 5 MR. OTTENHEIMER:  
 6 A. I cannot recall.  
 7 COFFEY, Q.C.:  
 8 Q. Okay. Now, Mr. Simmons was asking you about,  
 9 it was put to you, well, you know, you  
 10 certainly wanted to go public, as it were?  
 11 MR. OTTENHEIMER:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. To use that phrase. And he asked you about  
 15 Mr.--what you recalled of Mr. Tilley's  
 16 position. I'm going to ask you, in your  
 17 meetings with George Tilley during the summer  
 18 of 2005 or your phone conversations with him,  
 19 for example, if July 19th was a phone call, if  
 20 you wanted to go public and George Tilley  
 21 wanted to go public at that point, I take it  
 22 then he's CEO and you're the Minister, there'd  
 23 be nothing to stop a public pronouncement  
 24 then? I mean, if you were both ad idem on  
 25 that, then it would have happened?

Page 49

1 MR. OTTENHEIMER:  
 2 A. Mr. Tilley may have had a personal view, I  
 3 mean, I -  
 4 COFFEY, Q.C.:  
 5 Q. No, no, no.  
 6 MR. OTTENHEIMER:  
 7 A. - can't speak to that, I can't speak to that.  
 8 COFFEY, Q.C.:  
 9 Q. But if he wanted to go public and you wanted  
 10 to, like, right now, then it would happen, you  
 11 would assume?  
 12 MR. OTTENHEIMER:  
 13 A. I would think. If it were the collective view  
 14 of Eastern Health -  
 15 COFFEY, Q.C.:  
 16 Q. Yes. When I say George Tilley, I'm talking  
 17 about, I mean, he's -  
 18 MR. OTTENHEIMER:  
 19 A. Right. If it were the collective view, if the  
 20 decision were made that would concur with my  
 21 view, I would think that would happen, yes.  
 22 COFFEY, Q.C.:  
 23 Q. Sure. Mr. Pritchard asked you questions about  
 24 budgetary matters, you recall just now?  
 25 MR. OTTENHEIMER:

Page 50

1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. And just so I'm clear, again, I take it that  
 4 an organization such as Eastern Health Board  
 5 of Trustees would present a proposed budget?  
 6 MR. OTTENHEIMER:  
 7 A. Correct.  
 8 COFFEY, Q.C.:  
 9 Q. To the Department?  
 10 MR. OTTENHEIMER:  
 11 A. Um-hm.  
 12 COFFEY, Q.C.:  
 13 Q. And the Department, there would be a total  
 14 dollar figure?  
 15 MR. OTTENHEIMER:  
 16 A. Um-hm.  
 17 COFFEY, Q.C.:  
 18 Q. Maybe allotments within it, but there'd be a  
 19 total dollar figure, correct?  
 20 MR. OTTENHEIMER:  
 21 A. Um-hm.  
 22 COFFEY, Q.C.:  
 23 Q. And then the Department would come back with a  
 24 lesser figure, at times?  
 25 MR. OTTENHEIMER:

Page 51

1 A. Quite possible.  
 2 COFFEY, Q.C.:  
 3 Q. And then whatever the final figure was that  
 4 was arrived at, approved of by the Department  
 5 and ultimately by the House of Assembly?  
 6 MR. OTTENHEIMER:  
 7 A. Um-hm.  
 8 COFFEY, Q.C.:  
 9 Q. Because Eastern Health's budget would be  
 10 within the Department of Health's larger  
 11 budget?  
 12 MR. OTTENHEIMER:  
 13 A. Correct.  
 14 COFFEY, Q.C.:  
 15 Q. Right. So Eastern Health would have a certain  
 16 amount of money allotted to it?  
 17 MR. OTTENHEIMER:  
 18 A. Correct.  
 19 COFFEY, Q.C.:  
 20 Q. How the money was spent then by Eastern Health  
 21 from that point on, whose determination was  
 22 that?  
 23 MR. OTTENHEIMER:  
 24 A. That would be the internal affairs of Eastern  
 25 Health.

Page 52

1 COFFEY, Q.C.:  
 2 Q. So if they have a total figure of X dollars,  
 3 after it's approved for X dollars, within that  
 4 budgetary year then they can move it around  
 5 within their own -  
 6 MR. OTTENHEIMER:  
 7 A. I would -  
 8 COFFEY, Q.C.:  
 9 Q. That's your understanding?  
 10 MR. OTTENHEIMER:  
 11 A. I would think. I would think, yeah.  
 12 COFFEY, Q.C.:  
 13 Q. But there were certainly instances where the  
 14 Government, in the middle of the budgetary  
 15 year, would provide money?  
 16 MR. OTTENHEIMER:  
 17 A. Um-hm.  
 18 COFFEY, Q.C.:  
 19 Q. For certain things. An example was a CT  
 20 scanner for the Burin Peninsula, which I  
 21 gather was announced in June of July of 2005?  
 22 MR. OTTENHEIMER:  
 23 A. Um-hm.  
 24 COFFEY, Q.C.:  
 25 Q. That's yes?

Page 53

1 MR. OTTENHEIMER:  
 2 A. Yes, I recall that, um-hm.  
 3 COFFEY, Q.C.:  
 4 Q. You were telling Mr. Pritchard that you felt  
 5 that you had to be regularly briefed and  
 6 wanted to be and it was known that you wanted  
 7 to be regularly briefed on the ER/PR issue?  
 8 MR. OTTENHEIMER:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Okay. And I take it, as well, though, that in  
 12 relation to that that your view that you  
 13 didn't want to know what the general findings  
 14 were was known to your subordinates, you  
 15 communicated that to them? I want to be  
 16 briefed regularly?  
 17 MR. OTTENHEIMER:  
 18 A. Um-hm.  
 19 COFFEY, Q.C.:  
 20 Q. But at one point as this went on you  
 21 communicated to your subordinates that I don't  
 22 want to know what the external consultants  
 23 views are until that whole process is over?  
 24 MR. OTTENHEIMER:  
 25 A. The wording I would change -

Page 54

1 COFFEY, Q.C.:  
 2 Q. Okay, well -  
 3 MR. OTTENHEIMER:  
 4 A. - it's not I don't want to know. It was an  
 5 acceptance of a process completing itself in  
 6 its entirety. And, you know, to word it in  
 7 such a way, Mr. Coffey, as simply not wanting  
 8 to know, I mean, I think sends the wrong  
 9 message.  
 10 COFFEY, Q.C.:  
 11 Q. Okay, well -  
 12 MR. OTTENHEIMER:  
 13 A. It was my acceptance to wait until the  
 14 exercise had been completed and then eagerly  
 15 wanting to know all the results.  
 16 COFFEY, Q.C.:  
 17 Q. Who was suggesting to you, like, this, you  
 18 should kind of wait until the process is over,  
 19 do you remember who that was?  
 20 MR. OTTENHEIMER:  
 21 A. I don't.  
 22 COFFEY, Q.C.:  
 23 Q. Because you had asked Moira Hennessey to find  
 24 out what was in the reports?  
 25 MR. OTTENHEIMER:

Page 55

1 A. Um-hm.  
 2 COFFEY, Q.C.:  
 3 Q. She didn't come back with an answer?  
 4 MR. OTTENHEIMER:  
 5 A. Um-hm.  
 6 COFFEY, Q.C.:  
 7 Q. That you can recall?  
 8 MR. OTTENHEIMER:  
 9 A. I don't recall, I don't recall that  
 10 discussion.  
 11 COFFEY, Q.C.:  
 12 Q. But for someone who wanted to be regularly  
 13 briefed, keep fully briefed -  
 14 MR. OTTENHEIMER:  
 15 A. Keep in mind our lab was--our tests were being  
 16 sent outside the province. Our lab was shut  
 17 down on this ER/PR issue, patient safety  
 18 concerns that were upper most in my mind were  
 19 addressed and that, to me, was fundamentally  
 20 vital and important. Yes, we will get the  
 21 results; yes, in due course we will know  
 22 exactly what went wrong as a result of the  
 23 consultants' review; yes, we will, as a  
 24 province, all be able to see and identify, Mr.  
 25 Coffey, what had taken place. But the primary

Page 56

1 concern, the primary concern was the safety of  
 2 the patient. Our tests were being sent  
 3 outside, our lab was shut down on this point  
 4 and that, to me, was significant.  
 5 COFFEY, Q.C.:  
 6 Q. And I appreciate that, Mr. Ottenheimer, but it  
 7 may also be significant that you didn't  
 8 actually force the issue at the time, in terms  
 9 of finding out as you had -  
 10 MR. OTTENHEIMER:  
 11 A. In the context of that time period, knowing  
 12 that a full and final report would be  
 13 presented and submitted. It's in that context  
 14 that this has to be understood.  
 15 COFFEY, Q.C.:  
 16 Q. And you do understand the total context then,  
 17 okay, that it took a Court battle and a Court  
 18 order for the contents of those reports to be  
 19 made available to people, such as yourself.  
 20 You understand the context, do you?  
 21 MR. OTTENHEIMER:  
 22 A. I certainly appreciate the context, but I also  
 23 said in my testimony that it would be my  
 24 expectation, as the minister, that I would  
 25 receive these reports in their entirety. I've

Page 57

1 stated that and that was my expectation.  
 2 Unfortunately, when that process had  
 3 completed, I, personally was no longer in the  
 4 department, but that was my expectation and  
 5 yes, as a series of events unfold, we do have-  
 6 -we had the Court process in the past. We  
 7 have a judicial inquiry today, but my  
 8 expectation in the context of what took place  
 9 some two and a half years ago was upon  
 10 completion of these reviews, these external  
 11 consultants conducting their review, that I  
 12 would receive the reports. I allowed that  
 13 process to finalize. You know, that was the  
 14 position that I took.  
 15 COFFEY, Q.C.:  
 16 Q. Okay, on that point, Mr. Ottenheimer, I have  
 17 one final point or two. On that point, were  
 18 you at the Cabinet briefing on ER/PR on May  
 19 17th, 2007?  
 20 MR. OTTENHEIMER:  
 21 A. On May 17th, 2007? I probably was, but cannot  
 22 say with absolute certainty.  
 23 COFFEY, Q.C.:  
 24 Q. Well, have you ever attended a Cabinet  
 25 briefing on ER/PR?

Page 58

1 MR. OTTENHEIMER:  
 2 A. There was a--a couple of times I excused  
 3 myself from Cabinet when ER/PR was raised,  
 4 simply because the mandate for this Commission  
 5 and the Terms of Reference, I think, were  
 6 being considered, I excused myself and it was  
 7 done quite voluntarily.  
 8 COFFEY, Q.C.:  
 9 Q. This is before the Commission was announced,  
 10 May 17th; the Commission was announced May  
 11 22nd.  
 12 MR. OTTENHEIMER:  
 13 A. Yes, uh-hm.  
 14 COFFEY, Q.C.:  
 15 Q. It's the first time, apparently, it was  
 16 brought to Cabinet.  
 17 MR. OTTENHEIMER:  
 18 A. Right.  
 19 COFFEY, Q.C.:  
 20 Q. So do you recall being there the first time  
 21 this came up in Cabinet?  
 22 MR. OTTENHEIMER:  
 23 A. There was a discussion at Cabinet. I was  
 24 present and you say that was prior to this  
 25 Commission being announced?

Page 59

1 COFFEY, Q.C.:  
 2 Q. Oh yes, it's five days before.  
 3 MR. OTTENHEIMER:  
 4 A. Yes. I was present for at least one  
 5 discussion on this issue.  
 6 COFFEY, Q.C.:  
 7 Q. Now, on that point then, the first Term of  
 8 Reference really deals with, to try and find  
 9 out what happened.  
 10 MR. OTTENHEIMER:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. You were certainly aware, sitting there in  
 14 Cabinet, that there had been two external  
 15 reviews done.  
 16 MR. OTTENHEIMER:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. Did you ever raise it with anybody as to say,  
 20 well why don't we just find out what's in  
 21 those reports? In fact, the whole--the final  
 22 two reports were in by then.  
 23 MR. OTTENHEIMER:  
 24 A. Uh-hm.  
 25 COFFEY, Q.C.:

Page 60

1 Q. They had been in a year before, in '06 and now  
 2 this is May of '07. Did you raise it in  
 3 Cabinet at the time--you've told us you always  
 4 thought that you'd get those reports.  
 5 MR. OTTENHEIMER:  
 6 A. Correct.  
 7 COFFEY, Q.C.:  
 8 Q. So did you raise it with the Cabinet at the  
 9 time, why don't we just go and get the  
 10 reports?  
 11 MR. OTTENHEIMER:  
 12 A. I don't specifically recall raising that.  
 13 Whether the department and the new minister  
 14 had--was privy to that information, I'm not  
 15 sure.  
 16 COFFEY, Q.C.:  
 17 Q. Well why didn't you raise it?  
 18 MR. OTTENHEIMER:  
 19 A. It was--certainly there was a new minister, in  
 20 fact by that time, it was the second minister  
 21 that had succeeded my tenure as the Minister  
 22 of Health and Community Services, and that  
 23 issue and that approach or any questions that  
 24 were to be asked, I'm sure would have been  
 25 raised by the minister of the day.

Page 61

1 COFFEY, Q.C.:

2 Q. No, but why didn't you raise it?

3 MR. OTTENHEIMER:

4 A. Because it was an issue that I would leave to

5 the minister of the day in his capacity as

6 Minister of Health and Community Services and

7 to allow him to conduct his role in accordance

8 with his own wishes.

9 COFFEY, Q.C.:

10 Q. And were you asked anything about it at the

11 time?

12 MR. OTTENHEIMER:

13 A. Not that I recall.

14 COFFEY, Q.C.:

15 Q. Okay, just there was one final point,

16 Commissioner, it's material that we only

17 received yesterday, actually, having it in its

18 entirety. It's Exhibit P-0164, if that can be

19 brought up please?

20 THE COMMISSIONER:

21 Q. That's information provided by the province?

22 COFFEY, Q.C.:

23 Q. Yes, it is, Commissioner. And this is a

24 document, it's "Confidential Memorandum to

25 Executive Council". The title is "New

Page 62

1 Treatment Therapies for Cancer Patients" and

2 this deals with a recommendation that the

3 province fund Herceptin. As a matter of fact,

4 it was put forward--when you look at page 5,

5 please, I'm just going to scroll down a bit

6 there. This particular copy is not signed,

7 but I take it there's probably a signed copy

8 somewhere because Herceptin was funded. It's

9 dated October 26th, 2005 and there are certain

10 attachments. So this was something that you

11 were putting forward?

12 MR. OTTENHEIMER:

13 A. Yes.

14 COFFEY, Q.C.:

15 Q. Do you recall in your own mind whether there

16 was ever any association between Herceptin and

17 the ER/PR issue?

18 MR. OTTENHEIMER:

19 A. No, I don't. There is some discussion on the

20 communications.

21 COFFEY, Q.C.:

22 Q. It's at page 6 actually of the exhibit.

23 MR. OTTENHEIMER:

24 A. I remember bringing forward this paper and

25 Herceptin was something that was--and the fact

Page 63

1 that the province was now in a position to

2 help fund Herceptin for cancer patients, I

3 know was greeted with great acceptance because

4 it was recognized as an important treatment

5 regime. It, I think, had been lobbied for by

6 a number of oncologists. If I recall, I think

7 the majority of Canadian jurisdictions funded

8 Herceptin. In looking at this briefly, I

9 believe New Brunswick was the only other

10 province that did not, so really we were

11 falling in line with the vast majority of

12 other Canadian provinces. But yes, attached

13 to the Cabinet paper is a communications

14 analysis.

15 COFFEY, Q.C.:

16 Q. If I could, I'll just bring it up here, Mr.

17 Ottenheimer, for you.

18 MR. OTTENHEIMER:

19 A. There's also a legislative analysis.

20 COFFEY, Q.C.:

21 Q. Yes, it's Communication Plan, Annex II.

22 MR. OTTENHEIMER:

23 A. Right, but there's also a legislative

24 analysis, a financial analysis, but yes, there

25 is--every Cabinet paper has attached to it a

Page 64

1 communications analysis and this one is here.

2 COFFEY, Q.C.:

3 Q. And at the time, do you recall any thoughts

4 on--did you have any thoughts at the time

5 about why is this being included in the

6 communications analysis involving public

7 environment, I think it says. I mean the

8 first part of it, yes, is about Herceptin

9 advances in cancer research.

10 MR. OTTENHEIMER:

11 A. Sure.

12 COFFEY, Q.C.:

13 Q. And a recent article about, Globe and Mail

14 article, October 19th, 2005 touting Herceptin

15 as an effective drug. When we look to the end

16 of that paragraph, beginning with the word

17 "Locally there has been significant media

18 attention about inaccurate results from

19 hormone receptor tests for breast cancer

20 patients"--and it goes on about that same

21 topic in the next paragraph as being a

22 significant reaction to this issue and then

23 refers to Gerri Rogers. And then the story

24 has also received national attention and a

25 recent CBC story, October 20th, 2005, titled



Page 65

1 "Unreliable Tests Give Lesson to All Labs" and  
 2 then it goes on from there. And it ends with  
 3 the following sentence: "Given the negative  
 4 coverage of this story"--which presumably is  
 5 ER/PR--"and the resulting lack of confidence  
 6 among breast cancer patients and their  
 7 reliability of testing procedures in the  
 8 province, it is important that government  
 9 respond with positive messages about the  
 10 introduction of Herceptin to the Provincial  
 11 Systemic Therapy (Chemotherapy) Program." So  
 12 that seems--what did you interpret that to  
 13 mean?  
 14 MR. OTTENHEIMER:  
 15 A. That would not be any--any communications  
 16 analysis in support of a Cabinet paper would  
 17 have that sort of language. It is not  
 18 unusual, that is the purpose of a  
 19 communications analysis to describe with some  
 20 accuracy what the public communications on a  
 21 particular topic or a related topic, or for  
 22 that matter, an indirectly related topic.  
 23 That is not unusual. The whole concept of  
 24 messaging, I suppose in some sense is part and  
 25 parcel of a communications regime. That, as I

Page 66

1 recall and I, you know, I guess other people  
 2 would have a better recollection on this  
 3 point, maybe those who keep the Cabinet  
 4 minutes, but I do not even recall that issue  
 5 being discussed. It was important for me, as  
 6 the minister of the day, to introduce to the  
 7 public of this province the availability of a  
 8 drug that was helpful in early breast cancer;  
 9 that's what was important and that was done.  
 10 And I remember very positive--on the topic of  
 11 communications, very positive coverage in the  
 12 local media recognizing the fact that  
 13 government had made this decision. That's  
 14 what's important. The fact that there is  
 15 reference in a communications analysis, one  
 16 way or the other, is quite normal for any  
 17 communications analysis that is attached as an  
 18 addendum to a Cabinet paper.  
 19 COFFEY, Q.C.:  
 20 Q. Under "Strategic Considerations" which is on  
 21 the same page, page 7, just below what I just  
 22 read to you, the third bullet says, "Given  
 23 recent media reports about ER/PR testing and  
 24 the public's resulting loss of confidence in  
 25 the health system, it is important that

Page 67

1 government respond to the needs of breast  
 2 cancer patients."  
 3 MR. OTTENHEIMER:  
 4 A. Uh-hm.  
 5 COFFEY, Q.C.:  
 6 Q. So in the Communications Plan, anyway, there  
 7 seems to be a linkage between the two.  
 8 MR. OTTENHEIMER:  
 9 A. In the Communications Plan, according to that  
 10 language, there may well be, but what's  
 11 important here, Mr. Coffey, is the providing  
 12 of a drug that will assist those individuals  
 13 who may well benefit and I believe somewhere  
 14 in that paper I think there are some forty  
 15 women who benefited immediately from this  
 16 decision being made.  
 17 COFFEY, Q.C.:  
 18 Q. Yes, and do you know how long before October  
 19 of 2005 the lobbying for the oncologists had  
 20 been going on to have Herceptin funded?  
 21 MR. OTTENHEIMER:  
 22 A. I don't know how long, I mean, to even advance  
 23 a paper to this stage, it would take awhile.  
 24 I don't know the start-up date, but it would  
 25 certainly take, I would think, several months,

Page 68

1 but I just don't know--or weeks, perhaps, I  
 2 don't know.  
 3 COFFEY, Q.C.:  
 4 Q. Well certainly weeks, months, might it be even  
 5 years?  
 6 MR. OTTENHEIMER:  
 7 A. Possibly, but I would certainly think there  
 8 would--I know oncologists were quite  
 9 enthusiastic about, you know, this decision  
 10 that government had made. So I would think  
 11 the lobbying effort had started sometime in  
 12 advance.  
 13 COFFEY, Q.C.:  
 14 Q. Did anyone speak to you about how long at the  
 15 time that the oncologists had been looking for  
 16 Herceptin for their patients?  
 17 MR. OTTENHEIMER:  
 18 A. I don't recall that, Mr. Coffey.  
 19 COFFEY, Q.C.:  
 20 Q. You don't recall anybody ever raising that  
 21 with you?  
 22 MR. OTTENHEIMER:  
 23 A. No.  
 24 COFFEY, Q.C.:  
 25 Q. Thank you very much, Commissioner.

Page 69

1 THE COMMISSIONER:  
 2 Q. Mr. Ottenheimer, I hate to do this to you  
 3 because I'm sure it's been a long time, but  
 4 there are just a couple of points, just more  
 5 organizational than anything else, that I  
 6 would like you to clarify for me.  
 7 MR. JOHN OTTENHEIMER, EXAMINATION BY THE COMMISSIONER  
 8 Q. One is what's the role of the Director of  
 9 Communications?  
 10 MR. OTTENHEIMER:  
 11 A. Each department in government has a Director  
 12 of Communications to work relatively closely  
 13 with the Minister and the executive level of  
 14 that department. The Director of  
 15 Communications would correspond and discuss on  
 16 a regular basis with the central  
 17 communications arm of government. They would  
 18 assist, for example, if there were a media  
 19 request for me, for a scrum, for example on a  
 20 particular point -  
 21 THE COMMISSIONER:  
 22 Q. And we've seen that they prepare briefing  
 23 notes for you.  
 24 MR. OTTENHEIMER:  
 25 A. They work in the preparation of briefing notes

Page 70

1 as well. Often they would accompany the  
 2 Minister to the House of Assembly and after a  
 3 question period, if a media person had an  
 4 interview request, that Director of  
 5 Communications would work with the Minister in  
 6 some form of preparation for that interview.  
 7 So it's direct involvement in working with the  
 8 Minister, in a direct political sense, I  
 9 guess, in response to public issues of  
 10 concern, dealing -  
 11 THE COMMISSIONER:  
 12 Q. Well I suppose that's really where my question  
 13 is going, is it communicating outside of  
 14 government that's the primary role in the  
 15 sense of allowing a minister to present the  
 16 perspective of the government or the  
 17 department on whatever public issue happens to  
 18 be in the news at the time -  
 19 MR. OTTENHEIMER:  
 20 A. Uh-hm.  
 21 THE COMMISSIONER:  
 22 Q. Prepare for that be bringing in information or  
 23 does the communication person have any role  
 24 internally within the department, within  
 25 department analysis of something, for example?

Page 71

1 MR. OTTENHEIMER:  
 2 A. More the first, I would say, Madam  
 3 Commissioner, than the second. Working with--  
 4 obviously the Director of Communications would  
 5 never play a public role himself or herself,  
 6 that would be left to the Minister, but would  
 7 certainly work with the Minister in  
 8 preparation for that public role. In response  
 9 to your second point, I think there's a more  
 10 limited role for a director, but that director  
 11 would often sit in, in briefings, and would be  
 12 part of maybe executive discussions that are  
 13 taking place. But primarily it would be the  
 14 role of the Director of Communications to  
 15 assist the Minister on issues of public  
 16 interest and concern and to frequently  
 17 communicate with central communications  
 18 agencies--or in this case, agency, again on  
 19 issues of public concern.  
 20 THE COMMISSIONER:  
 21 Q. So then, for example, on the question of  
 22 ER/PR, obviously, which is the one that we are  
 23 concerned with.  
 24 MR. OTTENHEIMER:  
 25 A. Yes.

Page 72

1 THE COMMISSIONER:  
 2 Q. Harking back to a former life of my own, it  
 3 seems to me that one might expect that  
 4 Assistant Deputy Ministers or Deputy Ministers  
 5 might get involved in preparing for a Minister  
 6 a memo of some kind--I won't call it a  
 7 briefing note, but a memo to make sure that  
 8 the Minister is fully advised in respect of a  
 9 particular issue within the department.  
 10 Whether that might be a publicly known issue  
 11 or not, if it's significant within the  
 12 department and it's not strictly on an  
 13 operational's level, then it's the kind of  
 14 thing that a minister needs to know about and  
 15 the deputy or the ADM prepares a memo of some  
 16 kind -  
 17 MR. OTTENHEIMER:  
 18 A. Uh-hm.  
 19 THE COMMISSIONER:  
 20 Q. So that the Minister knows exactly the  
 21 department's perspective on what has happened  
 22 or is about to happen or what a Deputy or  
 23 Assistant Deputy, for example, might suggest  
 24 as a solution to a particular problem.  
 25 MR. OTTENHEIMER:

Page 73

1 A. Uh-hm, uh-hm.  
 2 THE COMMISSIONER:  
 3 Q. Would there have been that kind of a thing in  
 4 the ER/PR--or do departments run differently  
 5 now, I'm ancient history here.  
 6 MR. OTTENHEIMER:  
 7 A. No, that--I don't think that can be ruled out,  
 8 I don't think there's a clearly defined  
 9 descriptive role and very often, you know,  
 10 that role to some limited extent may change on  
 11 a day-to-day basis, but I think what you've  
 12 described, Madam Commissioner, could very well  
 13 happen on a particular point.  
 14 THE COMMISSIONER:  
 15 Q. But I take it in the case of this, ER/PR,  
 16 there was sort of no putting together of the  
 17 heads of the ADMS or the Deputies and saying -  
 18 MR. OTTENHEIMER:  
 19 A. Well there was an ADM who took charge, I  
 20 guess, in her dealings with Eastern Health.  
 21 THE COMMISSIONER:  
 22 Q. And you're referring to Ms. Hennessey?  
 23 MR. OTTENHEIMER:  
 24 A. Yes, I am. But that, I would think, would  
 25 have been overseen as well by Mr. Abbott, who

Page 74

1 is the Deputy Minister.  
 2 THE COMMISSIONER:  
 3 Q. All right. Now switching gears for just a  
 4 second and it's on the--once again going back  
 5 to what Ms. Dawe said about her understanding  
 6 of the rule of the Board of Trustees.  
 7 MR. OTTENHEIMER:  
 8 A. Yes.  
 9 THE COMMISSIONER:  
 10 Q. And I took her response to be that really the  
 11 Board of Trustees is not expected to be  
 12 involved on an operational level.  
 13 MR. OTTENHEIMER:  
 14 A. Yes.  
 15 THE COMMISSIONER:  
 16 Q. That unless an issue became one that involved  
 17 other outside agencies, became a major public  
 18 issue, then the Board of Trustees would not  
 19 expect to hear about it. That was something  
 20 somebody else took care of. In listening to  
 21 you, I understand as well from the Department  
 22 of Health's perspective, essentially you're  
 23 interested in policy as well.  
 24 MR. OTTENHEIMER:  
 25 A. Uh-hm.

Page 75

1 THE COMMISSIONER:  
 2 Q. You leave it to somebody else to deal with  
 3 operational level problems.  
 4 MR. OTTENHEIMER:  
 5 A. Uh-hm.  
 6 THE COMMISSIONER:  
 7 Q. One goes to the Department of Health with  
 8 budget issues or major -  
 9 MR. OTTENHEIMER:  
 10 A. Program issues.  
 11 THE COMMISSIONER:  
 12 Q. Program issues or that kind of thing, but you  
 13 don't expect to hear from a Board of Trustees  
 14 on a matter which is reasonably viewed as  
 15 being at the operational level.  
 16 MR. OTTENHEIMER:  
 17 A. Correct.  
 18 THE COMMISSIONER:  
 19 Q. Who looks after operational level problems, in  
 20 your view?  
 21 MR. OTTENHEIMER:  
 22 A. Well that would be the role of the Health Care  
 23 authority, in this particular case, Eastern  
 24 Health.  
 25 THE COMMISSIONER:

Page 76

1 Q. Yes, except the Board of Directors of Eastern  
 2 Health would not be involved, so does that  
 3 mean the CEO's responsibility is operational  
 4 level or is it below the CEO?  
 5 MR. OTTENHEIMER:  
 6 A. No, I would say the CEO and his or her  
 7 designate.  
 8 THE COMMISSIONER:  
 9 Q. Okay. So from the perspective of a Minister  
 10 of Health, if there were a problem within a  
 11 laboratory, for example, of the nature that we  
 12 now know occurred in this case -  
 13 MR. OTTENHEIMER:  
 14 A. Yes.  
 15 THE COMMISSIONER:  
 16 Q. You would expect a CEO to be advised of the  
 17 matter and to take charge in respect of the--  
 18 coming up with the solution to the problem.  
 19 MR. OTTENHEIMER:  
 20 A. That would be my expectation.  
 21 THE COMMISSIONER:  
 22 Q. Thank you, Mr. Ottenheimer, very much for your  
 23 contribution.  
 24 MR. OTTENHEIMER:  
 25 A. Thank you, Madam Commissioner.

Page 77

1 THE COMMISSIONER:  
 2 Q. Now, Mr. Coffey, our next witness?  
 3 COFFEY, Q.C.:  
 4 Q. Tom Osborne. Commissioner, we take the break  
 5 usually at 11:00, can we take it early? We'll  
 6 go, extend it right out to lunchtime when we  
 7 come back, just it will allow me to reorganize  
 8 the paper here, if we could.  
 9 THE COMMISSIONER:  
 10 Q. Yes, it's fifteen minutes early. Well, okay  
 11 then if that's going to be of assistance.  
 12 COFFEY, Q.C.:  
 13 Q. Thank you, Commissioner.  
 14 THE COMMISSIONER:  
 15 Q. We'll take the break early. Fifteen minutes.  
 16 (RECESS)  
 17 THE COMMISSIONER:  
 18 Q. Please be seated. Mr. Coffey.  
 19 COFFEY, Q.C.:  
 20 Q. Thank you, Commissioner. The next witness is  
 21 Tom Osborne, Madam Registrar.  
 22 MR. TOM OSBORNE (SWORN) EXAMINATION BY BERNARD COFFEY,  
 23 Q.C.  
 24 COFFEY, Q.C.:  
 25 Q. Good morning, Mr. Osborne.

Page 78

1 MR. OSBORNE:  
 2 A. Good morning, Mr. Coffey.  
 3 COFFEY, Q.C.:  
 4 Q. Mr. Osborne, could you tell us please a little  
 5 bit about your background? I mean, I  
 6 appreciate you ended up as the Minister of  
 7 Health at one point in your life, but a  
 8 thumbnail sketch as to how you arrived at that  
 9 position?  
 10 MR. OSBORNE:  
 11 A. Okay. Well, I was born and raised in St.  
 12 John's, educated at the College of the North  
 13 Atlantic, formerly the College of Trades and  
 14 Technology where I pursued skilled trades. I  
 15 later did some studies at Memorial University.  
 16 Following that, I worked with Statistics  
 17 Canada for a number of years and then prior to  
 18 entering politics, I worked in the private  
 19 business sector, both for a company and I  
 20 guess simultaneous to that as a business owner  
 21 and operator. First elected to the House of  
 22 Assembly in 1996, where I served for the  
 23 previous 12 years, to date. Re-elected in  
 24 1999, 2003 and again in 2007. During my seven  
 25 and a half years in opposition, I served a

Page 79

1 number of critic portfolios, including vice-  
 2 chair of caucus, parliamentary assistant to  
 3 the leader, critic for Industry Trade and  
 4 Technology, Government Services and  
 5 Environment and Labour. Upon forming  
 6 government, I was appointed to the portfolio  
 7 of Environment and Conservation where I served  
 8 for approximately two and a half years. Then  
 9 was appointed as Minister of Health and  
 10 Community Services. I served in that  
 11 portfolio for approximately ten months; and  
 12 then as Minister of Justice, where I served  
 13 for approximately ten months.  
 14 COFFEY, Q.C.:  
 15 Q. And I gather, at P-0131 please, page two,  
 16 please. And here is a Ministerial portfolio,  
 17 Department of Health, 1997 to the present. On  
 18 page two, you're the second last entry.  
 19 Indicates that you're Minister of Health and  
 20 Community Services from March 14th, 2006  
 21 until, presumably January 18th or 19th, 2007.  
 22 MR. OSBORNE:  
 23 A. That's correct. If I could point out there  
 24 for the record, I just noticed quickly,  
 25 Honourable Tom Marshall, I think that should

Page 80

1 be Honourable Elizabeth Marshall. I  
 2 apologize, perhaps I shouldn't be -  
 3 COFFEY, Q.C.:  
 4 Q. No, actually one point, if we scroll back onto  
 5 the first page, in fact you will see--just go  
 6 back, you will see Elizabeth Marshall's name.  
 7 Thomas Marshall at the time was acting for  
 8 several days, actually.  
 9 MR. OSBORNE:  
 10 A. Oh, I'm Sorry.  
 11 COFFEY, Q.C.:  
 12 Q. No, no, I appreciate the observation. Mr.  
 13 Osborne, I take it then that when you became  
 14 Minister of Health in March of 2006 and based  
 15 upon what you've told us, you had no prior  
 16 experience as a health critic?  
 17 MR. OSBORNE:  
 18 A. No, not as a health Critic.  
 19 COFFEY, Q.C.:  
 20 Q. In terms of the Department of Health and  
 21 Community Services, such as you found it, the  
 22 nature of what they do, when you arrived there  
 23 in March of 2006, did you actually have any  
 24 personal experience in that sort of human  
 25 endeavour, with your health and -

Page 81

1 MR. OSBORNE:  
 2 A. You know, having served in government at that  
 3 point for over ten years as a member of the  
 4 House of Assembly, we often advocate and get  
 5 involved and I've spoken in the house on a  
 6 number of occasions on social issues, many of  
 7 them which would have included health issues.  
 8 COFFEY, Q.C:  
 9 Q. Okay.  
 10 MR. OSBORNE:  
 11 A. You know, so sitting around the Cabinet table,  
 12 we received Cabinet documents on the Health  
 13 portfolio, so I would have had some knowledge  
 14 of some aspects of the Department of Health.  
 15 COFFEY, Q.C:  
 16 Q. So how long before you actually were appointed  
 17 Minister of Health did you know you were about  
 18 to be appointed?  
 19 MR. OSBORNE:  
 20 A. The day before.  
 21 COFFEY, Q.C:  
 22 Q. Could you tell us, please, what you recall  
 23 about the nature and the manner of the  
 24 learning curve, as you got into it? I mean,  
 25 how were you briefed, who briefed you on what?

Page 82

1 MR. OSBORNE:  
 2 A. Well, it was a pretty fast-moving department.  
 3 I mean, it's a very busy department at any  
 4 given time. It's the largest department in  
 5 government and, you know, almost half the  
 6 entire budget--when I first was appointed, the  
 7 House opened literally a week after me  
 8 assuming the role of Minister of Health and  
 9 Community Services. I had a binder of  
 10 briefing notes which perhaps contained fifty  
 11 or sixty or more briefings, which I took home  
 12 to read, and then subsequently was briefed on  
 13 each of the briefing notes with verbal  
 14 briefings.  
 15 COFFEY, Q.C:  
 16 Q. When would that have occurred?  
 17 MR. OSBORNE:  
 18 A. That would have been prior to the House  
 19 opening, so within the first week of being  
 20 Minister.  
 21 COFFEY, Q.C:  
 22 Q. So within the first week, you'd take home your  
 23 book of homework to read, effectively, read it  
 24 and then go and is briefed on each individual  
 25 item?

Page 83

1 MR. OSBORNE:  
 2 A. Yes, and that was in preparation, initially  
 3 certainly in preparation for the House of  
 4 Assembly opening and needing to understand the  
 5 issues well enough to accept questions and  
 6 answer those questions in the House. I guess  
 7 as a continuance from there, the budget came  
 8 down within another week to ten days after the  
 9 House opening and I had a binder of budget  
 10 changes and numbers, equally as large or  
 11 larger than the briefing book that I had to  
 12 absorb as well.  
 13 COFFEY, Q.C:  
 14 Q. Related to your department in particular.  
 15 MR. OSBORNE:  
 16 A. Yes.  
 17 COFFEY, Q.C:  
 18 Q. Now in the course of that process of being  
 19 briefed as the Minister of Health, did that  
 20 ever involve you debriefing the outgoing  
 21 minister, Mr. Ottenheimer?  
 22 MR. OSBORNE:  
 23 A. No, I had a brief discussion with John within  
 24 a day--a day of or within a day of assuming  
 25 the role of Minister. And, you know, just had

Page 84

1 asked if there are any areas that I should be  
 2 significantly aware of and, you know, he had  
 3 indicated that all of the individuals within  
 4 the department he had great confidence in,  
 5 they were good individuals, all there for the  
 6 right reasons and, you know, he felt that I  
 7 could be adequately briefed by the department.  
 8 He did suggest that if I had any questions or  
 9 concerns that I could certainly give him a  
 10 call.  
 11 COFFEY, Q.C:  
 12 Q. Before being sworn in as Minister of Health,  
 13 what, if any, awareness did you have of what  
 14 is now referred to as the ER/PR, estrogen  
 15 receptor and progesterone receptor matters?  
 16 MR. OSBORNE:  
 17 A. I don't ever recall it going to Cabinet, so  
 18 primarily my involvement or my understanding,  
 19 my knowledge of the issue would have been  
 20 through the media.  
 21 COFFEY, Q.C:  
 22 Q. Okay. And what did you understand at the  
 23 time?  
 24 MR. OSBORNE:  
 25 A. Well I understood that individuals were upset

Page 85

1 that they had learned from the media about the  
 2 retesting, as opposed to learning from Eastern  
 3 Health. I mean, that was, you know, primarily  
 4 my understanding of the issue prior to going  
 5 to the Department of Health.  
 6 COFFEY, Q.C:  
 7 Q. In the middle of March you arrived, do you  
 8 recall who it was that briefed you on the  
 9 ER/PR issue?  
 10 MR. OSBORNE:  
 11 A. At the briefing table, I had all of the ADMs,  
 12 the Deputy Minister and some other officials  
 13 within the executive, so we would have a  
 14 discussion on all issues. There wasn't--I  
 15 mean, there wasn't a designated briefing on  
 16 ER/PR, if that's your question. It was a  
 17 briefing on all briefing notes within the  
 18 briefing book itself.  
 19 COFFEY, Q.C:  
 20 Q. Do you recall who briefed you on ER/PR?  
 21 MR. OSBORNE:  
 22 A. There would have been general discussion  
 23 around the table, I think, on the issue, but  
 24 primarily it would have been the Deputy  
 25 Minister, John Abbott and the Assistant Deputy

Page 86

1 Minister, Moira Hennessey.  
 2 COFFEY, Q.C:  
 3 Q. So before being sworn in as Minister, had you  
 4 known John Abbott?  
 5 MR. OSBORNE:  
 6 A. No. I mean, I knew of John, I mean in my  
 7 experience as a MHA, I knew that he was at  
 8 Treasury Board at one point. I don't recall  
 9 his exact position there, and I knew that he  
 10 was involved with, well it wasn't Eastern  
 11 Health, I think it was the St. John's, Health  
 12 Care Board I believe it was called at the  
 13 time. I knew he had some involvement, you  
 14 know, within health care itself. He had been  
 15 the Deputy Minister of Health, you know, for  
 16 approximately a year and a half, I guess,  
 17 prior to my arrival.  
 18 COFFEY, Q.C:  
 19 Q. How about Moira Hennessey? Had you known her  
 20 before?  
 21 MR. OSBORNE:  
 22 A. No, I didn't know her personally and in fact,  
 23 I don't know if I've ever had a conversation  
 24 with her. I know that I'd seen her at church,  
 25 she went to the same church as our family did,

Page 87

1 but outside of that, I don't know if I ever  
 2 had a conversation with her prior to.  
 3 COFFEY, Q.C:  
 4 Q. Prior to you becoming Minister?  
 5 MR. OSBORNE:  
 6 A. No.  
 7 COFFEY, Q.C:  
 8 Q. The Director of Communications when you  
 9 arrived in the Department of Health, was whom?  
 10 MR. OSBORNE:  
 11 A. Tansy Mundon.  
 12 COFFEY, Q.C:  
 13 Q. Had you known Tansy before that?  
 14 MR. OSBORNE:  
 15 A. No, I didn't.  
 16 COFFEY, Q.C:  
 17 Q. When you first arrived in the department, who  
 18 was your executive assistant?  
 19 MR. OSBORNE:  
 20 A. That would have been Ewen Jones.  
 21 THE COMMISSIONER:  
 22 Q. I'm sorry, I didn't get the first name.  
 23 MR. OSBORNE:  
 24 A. Ewen, E-W-E-N.  
 25 THE COMMISSIONER:

Page 88

1 Q. Thank you.  
 2 COFFEY, Q.C:  
 3 Q. Jones?  
 4 MR. OSBORNE:  
 5 A. Yes.  
 6 COFFEY, Q.C:  
 7 Q. And how long was -  
 8 MR. OSBORNE:  
 9 A. Was he my executive assistant?  
 10 COFFEY, Q.C:  
 11 Q. Yes.  
 12 MR. OSBORNE:  
 13 A. He started with me in, I think January of  
 14 2004.  
 15 COFFEY, Q.C:  
 16 Q. Okay, so you had some experience with him, so  
 17 you brought him to the department with you,  
 18 effectively.  
 19 MR. OSBORNE:  
 20 A. Yes, into the Department of Environment and  
 21 Conservation, initially, and then subsequently  
 22 into the Department of Health and Community  
 23 Services.  
 24 COFFEY, Q.C:  
 25 Q. And what happened to Mr. Jones?

Page 89

1 MR. OSBORNE:  
 2 A. Ewen had indicated to me that he was a retired  
 3 RNC officer, in fact, but he had indicated  
 4 that, you know, the hours of work and the  
 5 expectation, I guess on him was more than he  
 6 had expected, in terms of hours of work.  
 7 COFFEY, Q.C:  
 8 Q. In Health itself?  
 9 MR. OSBORNE:  
 10 A. Well he had indicated that to me, I think  
 11 prior to going to Health and he had indicated  
 12 to me that he was going to seek other  
 13 employment that would be less demanding of  
 14 him. So I knew that that was taking place and  
 15 I knew when we entered Health the demands  
 16 certainly in Health would have much greater  
 17 than they were in Environment and  
 18 Conservation, so -  
 19 COFFEY, Q.C:  
 20 Q. So how long did he last in Health and who was  
 21 his replacement?  
 22 MR. OSBORNE:  
 23 A. I think he may have been there maybe two or  
 24 three months in the Department of Health and  
 25 Community Services. His replacement was

Page 90

1 Jonathan Galgay.  
 2 COFFEY, Q.C:  
 3 Q. And Jonathan was there how long?  
 4 MR. OSBORNE:  
 5 A. Well he was with me for the entire time I was  
 6 in Health and the entire time I was serving as  
 7 Minister within the Department of Justice.  
 8 COFFEY, Q.C:  
 9 Q. And was there a person named Darrell Hynes?  
 10 MR. OSBORNE:  
 11 A. Yes, Darrell was the senior policy advisor.  
 12 COFFEY, Q.C:  
 13 Q. So had you, before becoming Minister of  
 14 Health, had you known Darrell Hynes?  
 15 MR. OSBORNE:  
 16 A. Yes, I had.  
 17 COFFEY, Q.C:  
 18 Q. In what context had you known Darrell?  
 19 MR. OSBORNE:  
 20 A. Well I think Darrell was initially working for  
 21 MP Norm Doyle and I would have had dealings  
 22 with Darrell through there. Then he was  
 23 working with MP Loyola Hearn and I would have  
 24 had dealings with him there. Both of those  
 25 federal districts had parts of those districts

Page 91

1 within my provincial district, so I would have  
 2 had dealings with Darrell in those regards. I  
 3 knew him personally but not socially and I  
 4 knew him as Minister Ottenheimer's executive  
 5 assistant.  
 6 COFFEY, Q.C:  
 7 Q. Now he ended up as your senior policy advisor?  
 8 MR. OSBORNE:  
 9 A. That's correct.  
 10 COFFEY, Q.C:  
 11 Q. How did that come about?  
 12 MR. OSBORNE:  
 13 A. Well going to the Department of Health and  
 14 Community Services and knowing that the House  
 15 was going to be opening, you know, a week  
 16 later and then the budget a week after that,  
 17 and knowing it was the largest department in  
 18 government, and knowing that there was a  
 19 possibility my executive assistant was going  
 20 to be leaving, the position of senior policy  
 21 advisor was vacant. I had a desire to fill  
 22 that. I had contacted Minister Ottenheimer  
 23 and asked if I could get Darrell, at least on  
 24 a short-term basis to fill him in that role  
 25 temporarily while we looked for a permanent

Page 92

1 position there. John was a little resistant,  
 2 didn't want to give Darrell up. I think  
 3 Darrell was a good employee, John saw him as a  
 4 good employee. So I then contacted Brian  
 5 Crawley and indicated to Brian that I wanted  
 6 that position filled and asked if he could  
 7 speak with John Ottenheimer and see if we  
 8 could borrow Darrell, but it turned out that  
 9 Darrell was there, you know, filled the role,  
 10 it was more than just temporary.  
 11 COFFEY, Q.C:  
 12 Q. After he arrived, he stayed?  
 13 MR. OSBORNE:  
 14 A. That's correct.  
 15 COFFEY, Q.C:  
 16 Q. Do you recall when it was he arrived with you  
 17 as your senior policy advisor?  
 18 MR. OSBORNE:  
 19 A. It would have been, I don't recall exactly,  
 20 but I'm thinking it was within a week or two.  
 21 COFFEY, Q.C:  
 22 Q. Of you being sworn in?  
 23 MR. OSBORNE:  
 24 A. That's correct.  
 25 COFFEY, Q.C:

Page 93

1 Q. And why Darrell, why did you want Darrell?  
 2 MR. OSBORNE:  
 3 A. I specifically wanted Darrell because the fact  
 4 that I knew his work ethic and he would have  
 5 brought to me, knowing that it was a large  
 6 department and knowing that, you know, I had  
 7 little time to prepare for the House, he would  
 8 have brought some corporate knowledge, if you  
 9 want to call it that -  
 10 COFFEY, Q.C:  
 11 Q. Institutional or corporate knowledge.  
 12 MR. OSBORNE:  
 13 A. Of the department, you know, what had happened  
 14 in the department prior to my arrival to some  
 15 degree. He would add perspective to issues.  
 16 COFFEY, Q.C:  
 17 Q. In fact, he would have, presumably, some  
 18 experience and knowledge of the issues that  
 19 Mr. Ottenheimer had been dealing with -  
 20 MR. OSBORNE:  
 21 A. That's correct.  
 22 COFFEY, Q.C:  
 23 Q. - at the time the ministry was passed to you?  
 24 MR. OSBORNE:  
 25 A. Yes.

Page 94

1 COFFEY, Q.C:  
 2 Q. So--and you had gone to Mr. Crawley, I take  
 3 it, because he as the Premier's Chief of Staff  
 4 at the time?  
 5 MR. OSBORNE:  
 6 A. That's correct and essentially I was asking  
 7 for another Minister's EA, you know.  
 8 COFFEY, Q.C:  
 9 Q. I appreciate that. So now, I'm just trying  
 10 to--with respect to then some of the other  
 11 persons involved who will enter into the  
 12 account of your time as Minister. George  
 13 Tilley, had you known George Tilley before you  
 14 became Minister?  
 15 MR. OSBORNE:  
 16 A. No, I knew of his involvement, again, within  
 17 health care. I knew he was CEO of Eastern  
 18 Health, but I didn't know him personally, no.  
 19 COFFEY, Q.C:  
 20 Q. Nor I take it even before that, even  
 21 professionally you didn't know him?  
 22 MR. OSBORNE:  
 23 A. I may have had, over the course of my ten  
 24 years in politics, I can't say for certain  
 25 that I've never called him, I may have called

Page 95

1 him, but no, I didn't know him personally or  
 2 socially.  
 3 COFFEY, Q.C:  
 4 Q. And Joan Dawe, who is the Chairperson of the  
 5 Board of Trustees of Eastern Health, had you  
 6 known her before you became Minister?  
 7 MR. OSBORNE:  
 8 A. No, I didn't.  
 9 COFFEY, Q.C:  
 10 Q. Did you know anyone on a person basis, anyone  
 11 within the then senior management of Eastern  
 12 Health?  
 13 MR. OSBORNE:  
 14 A. No, not on a personal basis.  
 15 COFFEY, Q.C:  
 16 Q. Now with respect to, I'd ask you to reflect  
 17 back upon your working relationships with  
 18 various of these individuals. Now first of  
 19 all, before I get to that, how did you see  
 20 your role? What was your role as Minister of  
 21 Health from your perspective?  
 22 MR. OSBORNE:  
 23 A. I guess the management of a department within  
 24 government's mandate, from a governance  
 25 perspective to take advice from senior

Page 96

1 officials within the department. I guess I  
 2 would have seen their role as providing the  
 3 best advice possible to the Minister and the  
 4 Minister's role to take that advice and  
 5 determine what course of action based on  
 6 government's mandate to do with the advice.  
 7 COFFEY, Q.C:  
 8 Q. And your role as Minister, when did you, like  
 9 in what sort of circumstances did you feel you  
 10 could--or would intervene on an operational  
 11 basis? What would have to happen before you  
 12 would intervene operationally?  
 13 MR. OSBORNE:  
 14 A. I think, you know, you'd certainly have to see  
 15 something that certainly raised great concern  
 16 for government. Generally, I mean, you mean  
 17 operationally, Mr. Coffey, with the -  
 18 COFFEY, Q.C:  
 19 Q. Yes, well within your own department, number  
 20 one, and then in this context within Eastern  
 21 Health.  
 22 MR. OSBORNE:  
 23 A. I mean, within the department is a completely  
 24 different situation.  
 25 COFFEY, Q.C:



Page 97

1 Q. Okay, well we'll deal first of all with the  
 2 department.  
 3 MR. OSBORNE:  
 4 A. I mean, ultimately the Minister is  
 5 responsible--I guess the Deputy Minister, to  
 6 give some perspective, would be responsible  
 7 for the department from an administrative  
 8 perspective, but the Deputy would answer to  
 9 the Minister. The Minister would be  
 10 responsible for the overall governance of the  
 11 department. From an Eastern Health  
 12 perspective, Eastern Health were responsible  
 13 operationally and, you know, would work with  
 14 the department, in terms of providing advice.  
 15 The department and more specifically, I guess,  
 16 the executive within the department, including  
 17 myself, as Minister, would be responsible for  
 18 policy and procedure. They would be  
 19 responsible operationally.  
 20 COFFEY, Q.C:  
 21 Q. And then to intervene in an outside crown  
 22 established organization, such as Eastern  
 23 Health, you would--so within the department,  
 24 fine; outside, something would really have to  
 25 go wrong before you'd intervene?

Page 98

1 MR. OSBORNE:  
 2 A. Well I had never seen any reason while I was  
 3 there--I made requests of Eastern Health and  
 4 generally speaking they complied with the  
 5 requests. I think from time to time they  
 6 would remind me that, you know, they were  
 7 responsible for Eastern Health. From time to  
 8 time they would say, you know, something like  
 9 if you provide us with the additional funding,  
 10 we can do what you're asking for. But  
 11 generally speaking, you know, I understood  
 12 that they were an arm's length governed body  
 13 and I didn't see any reason, while I was  
 14 there, because I had confidence in the way  
 15 they were managing issues, to really step in  
 16 and say well hang on guys, you're doing  
 17 something--you really have to change the way  
 18 you're doing - But having said that, I should  
 19 go back, I mean, there were times, you know,  
 20 on different issues, I recall the Methadone  
 21 Clinic, I think, in Pleasantville, just to put  
 22 some perspective.  
 23 COFFEY, Q.C:  
 24 Q. Yes.  
 25 MR. OSBORNE:

Page 99

1 A. I mean, there were other issues that they  
 2 would comply, I recall the Methadone Clinic,  
 3 they were going to close that and carry out  
 4 some repairs, renovations, and just simply  
 5 close it. And, you know, I said I don't think  
 6 this is a good idea, so I had asked that they  
 7 try and find a way of continuing to treat the  
 8 patients while they carried out the repairs.  
 9 At the end of the day, on that particular  
 10 issue, they said that there was no possible  
 11 way but they carried out the renovations, I  
 12 think in a very expedient manner as to ensure  
 13 that the doors were closed only for a few  
 14 days. But, you know, that was an issue, as an  
 15 example that I -  
 16 COFFEY, Q.C:  
 17 Q. Yes, that's what I was trying to get some  
 18 sense of, trying to understand, you know, put  
 19 this all in context, that there were some  
 20 things that struck you as something, I really  
 21 don't think this is right or perhaps it could  
 22 be done in a slightly different fashion,  
 23 because of the public interest with the  
 24 Methadone Clinic being an example. You didn't  
 25 prevail upon them not to shut it, but they

Page 100

1 shut it for a very short period of time.  
 2 MR. OSBORNE:  
 3 A. Yeah, I mean at the end of the day, they still  
 4 did what--I mean, I provided my insight. They  
 5 still did what they wanted to do because it  
 6 was their determination that there was no  
 7 other way to do it. I provided my insight and  
 8 my thoughts on the issue, but at the end of  
 9 the day, they primarily, with some alteration,  
 10 did with the Methadone Clinic what they had  
 11 intended to do in the first place.  
 12 COFFEY, Q.C:  
 13 Q. So your relationship with Mr. Abbott, how was  
 14 that?  
 15 MR. OSBORNE:  
 16 A. We had a good working relationship, you know,  
 17 I had confidence in Mr. Abbott, I can say  
 18 that.  
 19 COFFEY, Q.C:  
 20 Q. Were there ever times that you've both  
 21 disagreed on a substantive matter?  
 22 MR. OSBORNE:  
 23 A. I'm sure there would have been. I can't  
 24 recall right now what they would have been,  
 25 but I'm certain that we would have had

Page 101

1 discussions and disagreements on certain  
 2 issues and I would have provided very clear  
 3 direction to Mr. Abbott on a number of issues,  
 4 but again, you know, it's difficult for me now  
 5 to recall -  
 6 COFFEY, Q.C:  
 7 Q. Well one that is going to come up, for  
 8 example, is the matter of briefing notes  
 9 leaving your department without you seeing  
 10 them, I take it that was one instance?  
 11 MR. OSBORNE:  
 12 A. That was an instance.  
 13 COFFEY, Q.C:  
 14 Q. And we'll deal with that, okay. An instance  
 15 where you gave clear direction, as you put it,  
 16 to Mr. Abbott in that regard?  
 17 MR. OSBORNE:  
 18 A. Yes.  
 19 COFFEY, Q.C:  
 20 Q. How about Moira Hennessey, your relationship  
 21 with her?  
 22 MR. OSBORNE:  
 23 A. Moira worked considerable hours. Again, I had  
 24 confidence in Moira and felt we had a good  
 25 working relationship.

Page 102

1 COFFEY, Q.C.:  
 2 Q. Did you ever get the sense that she'd be  
 3 reluctant to speak to you or to tell you  
 4 something?  
 5 MR. OSBORNE:  
 6 A. No, I never ever got that sense that all.  
 7 COFFEY, Q.C.:  
 8 Q. And the same question with John Abbott?  
 9 MR. OSBORNE:  
 10 A. No. I mean, they'd given me no reason to doubt  
 11 their roles within the Department while I was  
 12 there.  
 13 COFFEY, Q.C.:  
 14 Q. You never had any sense that they would fail  
 15 to give you bad news or news that you might  
 16 find disagreeable?  
 17 MR. OSBORNE:  
 18 A. No, no, not at all. In fact, I mean,  
 19 primarily while the House was open, but, you  
 20 know, oftentimes in between I would ask for a  
 21 meeting with a senior executive and we would  
 22 sit around the table, but, I mean, while the  
 23 House was open, as an example, you know, I  
 24 would go to each ADM, the Deputy Minister, and  
 25 say, you know, is there anything in your

Page 103

1 division that I have to be aware of going into  
 2 the House of Assembly today, is there anything  
 3 in the media regarding your division that I  
 4 have to be aware of, and, you know, are there  
 5 any issues that I have to be informed of prior  
 6 to the House opening. So, I mean, that would  
 7 -- primarily when the House was sitting, we  
 8 would do that every day, but there were often  
 9 other times that we would get together as the  
 10 executive within the Department to do a  
 11 similar exercise.  
 12 COFFEY, Q.C.:  
 13 Q. In terms of media coverage, I take it that  
 14 they would brief you verbally, and if  
 15 necessary, send you media coverage  
 16 electronically?  
 17 MR. OSBORNE:  
 18 A. The Communications Director was very efficient  
 19 in sending me communications electronically.  
 20 COFFEY, Q.C.:  
 21 Q. Which brings me to my next point. The next  
 22 person is Tansy Mundon. What was your  
 23 relationship with her, how did you find her?  
 24 MR. OSBORNE:  
 25 A. I found her very efficient in her role. I'd

Page 104

1 worked with a number of Communications  
 2 Directors and I think that of all the  
 3 Communications Directors that I'd worked with,  
 4 I would certainly say she was one of the  
 5 better ones within Government.  
 6 COFFEY, Q.C.:  
 7 Q. Your EA, your Executive Assistant, what role  
 8 or function did your Executive Assistant  
 9 perform?  
 10 MR. OSBORNE:  
 11 A. Primarily a point of contact for other  
 12 Executive Assistants -- I mean, other  
 13 Executive Assistants would quite often call  
 14 Darrell Hynes as well because of his long  
 15 involvement within the Department, and the  
 16 fact that they knew him quite well. Jonathan  
 17 was relatively new to the role, but, I mean,  
 18 he would sit in on executive meetings, you  
 19 know, was asked to provide advice to me as  
 20 well, and I understood that he was generally  
 21 new, so I think it was fair to say that I had  
 22 relied more heavily on Darrell Hynes.  
 23 COFFEY, Q.C.:  
 24 Q. Which was my next question -- okay, if you  
 25 could, tell us what was the role Mr. Hynes

Page 105

1 played? I appreciate he was called the Senior  
 2 Policy Advisor, but his de facto role was  
 3 what; in practice, what did he do?  
 4 MR. OSBORNE:  
 5 A. Well, he was Senior Policy Advisor.  
 6 COFFEY, Q.C.:  
 7 Q. Yes.  
 8 MR. OSBORNE:  
 9 A. He didn't work the same hours or go to  
 10 political functions or do some of the other  
 11 things that an Executive Assistant would do.  
 12 You know, he was the Senior Policy Advisor. I  
 13 relied on Darrell, like I say, for corporate  
 14 knowledge, but I think I relied on Darrell  
 15 more for advice than I would have on my  
 16 Executive Assistant because of the fact my  
 17 Executive Assistant had come from working for  
 18 a Federal MP, but was still generally new to  
 19 that type of environment, and I would rely on  
 20 Darrell, I think, more for advice than the  
 21 Executive Assistant.  
 22 COFFEY, Q.C.:  
 23 Q. And advice as to what sorts of things?  
 24 MR. OSBORNE:  
 25 A. Generally, anything that was happening within

Page 106

1 the Department, any issues that were raised.  
 2 Darrell had a very good understanding not only  
 3 of how to dissect an issue, but of how the  
 4 issue should be handled both within the  
 5 Department and within Government.  
 6 COFFEY, Q.C.:  
 7 Q. If we could, please -- ER/PR, you certainly  
 8 understand now what that is, and I appreciate  
 9 you likely understood while you were Minister.  
 10 Could you tell us, please, what you recall  
 11 about when you were first briefed about ER/PR?  
 12 What was your understanding initially of what  
 13 it involved and the nature of the issue from  
 14 the Ministry's perspective?  
 15 MR. OSBORNE:  
 16 A. Well, from the Ministry, my understanding -- I  
 17 know initially when I was briefed, I did  
 18 understand that it was an issue essentially  
 19 being managed by Eastern Health, and that they  
 20 would be providing updates and information to  
 21 Government on the issue. I mean,  
 22 operationally they were responsible for the  
 23 management of that issue. I think it's fair  
 24 to say that most issues that I dealt with were  
 25 under the direct management, or a great number

Page 107

1 of them from a departmental perspective, I  
 2 understood that this one was primarily managed  
 3 by Eastern Health, and I think I understood as  
 4 well in large part because of the complexity  
 5 of the issue, and the fact that they had the  
 6 professionals who understood the complexity of  
 7 the issue.  
 8 COFFEY, Q.C.:  
 9 Q. What did you understand, if anything, when  
 10 you were first introduced to the matter was  
 11 the role of the Department and your own  
 12 office? I mean, if Eastern Health has  
 13 management of this, why is the Department  
 14 involved at all?  
 15 MR. OSBORNE:  
 16 A. Well, they were providing updates to the  
 17 Department as I understood, and --  
 18 COFFEY, Q.C.:  
 19 Q. Why? The question, of course, is why are they  
 20 providing updates if it's their -- if it's  
 21 their matter to handle, why are they -- what  
 22 was your understanding about why they were  
 23 providing updates?  
 24 MR. OSBORNE:  
 25 A. I think in large part because, I mean, at any

Page 108

1 given time I could have received a question in  
 2 the House of Assembly on the issue, at any  
 3 given time I could have received a media  
 4 request on the issue. We understood that they  
 5 were handling it operationally. Now having  
 6 said that, I think it is fair to say that they  
 7 provided me with every level of comfort and I  
 8 had trust in how they were managing the issue  
 9 primarily because of the positive measures  
 10 they were putting in place to bring about  
 11 improvements at the lab to ensure -- which is  
 12 another reason, I think, they were providing  
 13 information. I mean, I'd asked for  
 14 information as well, but --  
 15 COFFEY, Q.C.:  
 16 Q. And I appreciate as this goes on because -- we  
 17 will get to that, but I'm just trying to get  
 18 some sense for the Commissioner of your  
 19 initial understanding of what the role of your  
 20 office and your Department was with respect to  
 21 this issue vis a vis Eastern Health, early  
 22 days in your tenure?  
 23 MR. OSBORNE:  
 24 A. Well, I understood that they were managing the  
 25 issue, you know, and from an operational

Page 109

1 perspective, it was an issue that was  
 2 primarily an Eastern Health issue.  
 3 COFFEY, Q.C.:  
 4 Q. Now as you've indicated, you understood that  
 5 the Department and you were being briefed by  
 6 Eastern Health -- I'm not suggesting you were  
 7 briefed directly, but your Department and then  
 8 you were being briefed early in your tenure as  
 9 Minister on this issue because you might be  
 10 asked a question in the House of Assembly  
 11 about it, or you might be asked by the media  
 12 about it, or for that matter you might even  
 13 have a constituent or a citizen call you about  
 14 it. So that was the purpose, I take it, of  
 15 you being briefed?  
 16 MR. OSBORNE:  
 17 A. Primarily, and, you know, I mean, it was a  
 18 significant issue for the patients and  
 19 families involved. So I think it's fair to  
 20 say if there was at any time an issue of this  
 21 significance that had, you know, a profound  
 22 impact on patients and on families, that the  
 23 Department would like to be kept in the know  
 24 as to how Eastern Health were dealing with the  
 25 issue, and certainly myself as Minister would

Page 110

1 like to be kept in the know as to how they  
 2 were dealing with the issue.  
 3 COFFEY, Q.C.:  
 4 Q. With a view to, I take it, if you weren't  
 5 happy with what you were being told, that you  
 6 might very well intervene or have your  
 7 officials intervene?  
 8 MR. OSBORNE:  
 9 A. Absolutely. I mean, again I had great  
 10 confidence in the measures that Eastern Health  
 11 were putting in place, and, you know, the  
 12 improvements that they were carrying out, and  
 13 most importantly, the fact that they were  
 14 giving me the assurance that as results were  
 15 returned and reviewed, that patients were  
 16 being contacted and informed of potential  
 17 treatment changes.  
 18 COFFEY, Q.C.:  
 19 Q. Okay. If we could then, Commissioner -- first  
 20 of all before I have Mr. Osborne's -- the  
 21 exhibits related to him entered, if I could  
 22 please bring up P-0125, Registrar. That's  
 23 going to come up on the screen there, Mr.  
 24 Osborne.  
 25 MR. OSBORNE:

Page 111

1 A. Pardon me?  
 2 COFFEY, Q.C.:  
 3 Q. This will come up on the screen in front of  
 4 you.  
 5 MR. OSBORNE:  
 6 A. Okay.  
 7 COFFEY, Q.C.:  
 8 Q. Now P-0125 is described as the Department of  
 9 Health and Community Services Briefing Notes  
 10 2006, and the first one -- if we look at pages  
 11 three and four, please, Registrar, three first  
 12 and go on to page four, please. Now scroll  
 13 down to the bottom of the page for you. This  
 14 is one of February 23rd, 2006, which is before  
 15 your tenure, Mr. Osborne, okay. Go on to page  
 16 five. Now this one, as you can see, it's a  
 17 question and answer briefing note. It's  
 18 single spaced, goes on for more than two  
 19 pages, and, in fact, is dated March 9th, 2006.  
 20 I have reason to believe that that is probably  
 21 -- that date, March 9th, 2006, should probably  
 22 be, Commissioner, March 9th, 2007. I only  
 23 raise it now, Mr. Osborne, with you because it  
 24 would have been the last -- well, not the  
 25 last, but certainly a briefing note just

Page 112

1 before you became Minister, several days  
 2 before, a week before, and Commissioner, if  
 3 you'll look at the bottom of page two of that  
 4 briefing note, which is page six of the  
 5 exhibit, the information contained therein  
 6 talks about lots of test results and Eastern  
 7 Health has filed an affidavit in court --  
 8 THE COMMISSIONER:  
 9 Q. Excuse me, Mr. Coffey. Mr. Pritchard may  
 10 speak.  
 11 MR. PRITCHARD:  
 12 Q. I'm sorry, is this the briefing note -- I  
 13 think there might be some confusion on this  
 14 particular briefing note. Is this the one in  
 15 2007?  
 16 COFFEY, Q.C.:  
 17 Q. Yes, that's what I was just saying.  
 18 THE COMMISSIONER:  
 19 Q. Yes, I believe Mr. Coffey has already  
 20 indicated he believes it's 2007, not 2006. I  
 21 think he's about to show us why he comes to  
 22 that conclusion.  
 23 MR. PRITCHARD:  
 24 Q. All right.  
 25 COFFEY, Q.C.:

Page 113

1 Q. That was all, just to -- I think Mr. Pritchard  
 2 and I had arrived at that conclusion some time  
 3 ago, but just because anybody looking at the  
 4 exhibit itself and the actual dating, the date  
 5 typed on this, would think that it's March  
 6 9th, 2006, because that's actually what's  
 7 typed there on the third page, but I just want  
 8 to point out to yourself, Commissioner, that  
 9 you may otherwise be puzzled if you're leafing  
 10 through this, why I haven't referred Mr.  
 11 Osborne to it, and there's every reason to  
 12 believe that this, in fact, has just got the  
 13 wrong year on it.

14 THE COMMISSIONER:  
 15 Q. There is reference to matters scheduled in May  
 16 of 2007.

17 COFFEY, Q.C.:  
 18 Q. Yes, and if you look through it, things that  
 19 occur after March 9th, 2006, factual matters.  
 20 So if we could go to page eight, please, of P-  
 21 0125. Now, Mr. Osborne, this is a question  
 22 and answer briefing note, spring, 2006,  
 23 Department of Health and Community Services,  
 24 and in terms of this one, it's dated March  
 25 15th, 2006.

Page 114

1 MR. OSBORNE:  
 2 A. Yes, that would have been the first briefing  
 3 note that would have been provided to me when  
 4 I assumed the role as Minister.

5 COFFEY, Q.C.:  
 6 Q. Now, sir, can you tell us, please -- you had  
 7 been a Minister before this in another  
 8 Department. What function did you view this  
 9 sort of question and answer briefing note to  
 10 perform?

11 MR. OSBORNE:  
 12 A. This -- I mean, there are generally two forms  
 13 of briefing notes. One is a question and  
 14 answer briefing note which is generally  
 15 prepared in preparation for the House of  
 16 Assembly. Another briefing note would just be  
 17 a standard briefing note. I'm not sure, Mr.  
 18 Coffey, if --

19 COFFEY, Q.C.:  
 20 Q. You've nailed it, okay, that's the  
 21 distinction.

22 MR. OSBORNE:  
 23 A. Okay.

24 COFFEY, Q.C.:  
 25 Q. In practice, from your perspective, what were

Page 115

1 the differences between them?

2 MR. OSBORNE:  
 3 A. Generally speaking, the question and answer  
 4 briefing note would outline potential  
 5 questions and potential answers to those  
 6 questions.

7 COFFEY, Q.C.:  
 8 Q. And versus a standard briefing note, as you  
 9 put it --

10 MR. OSBORNE:  
 11 A. Which would generally outline, you know,  
 12 primarily -- I mean, not a great deal of  
 13 difference often in the information, just how  
 14 the information is laid out, but a standard  
 15 briefing note would provide current status,  
 16 generally speaking, and if necessary on some  
 17 briefing notes, recommended courses of action  
 18 from time to time and so on.

19 COFFEY, Q.C.:  
 20 Q. Versus a question and answer briefing note  
 21 which would have questions posed, anticipated  
 22 questions? That's the title, in fact,  
 23 anticipated questions, and if we look at page  
 24 eight of this, it's a question and answer  
 25 briefing note. The title is "Re; testing of

Page 116

1 breast cancer patients, ER/PR". The issue,  
 2 "Breast cancer patients are still looking for  
 3 answers. Some patients may have missed out on  
 4 a drug therapy, Tamoxifen, that lowers the  
 5 risk of the cancer recurring. Some patients  
 6 say it's hard to find out whether their  
 7 results are right or not. The public is  
 8 concerned that not all samples have been re-  
 9 tested by Mount Sinai to date". Then there  
 10 are anticipated questions. Three of them  
 11 listed; has the testing been completed on the  
 12 samples sent to Mount Sinai, has everyone been  
 13 notified of the results, and what has been  
 14 done to correct this problem. The format  
 15 that's used is -- they don't say answers.  
 16 There doesn't appear really anywhere the word  
 17 "answers". It's "key messages".

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

20 COFFEY, Q.C.:  
 21 Q. Are the key messages supposed to answer the  
 22 questions?

23 MR. OSBORNE:  
 24 A. Not always. I think, you know, to put this in  
 25 perspective, especially on an issue such as

Page 117

1 this where Eastern Health would still be  
 2 trying to identify answers to question, if an  
 3 answer wasn't readily available if we were  
 4 asked a question -- I mean, because again this  
 5 is a question and answer briefing note in  
 6 preparation for the House, so if we were asked  
 7 a question and the Department simply didn't  
 8 know the answer to that question because they  
 9 were still looking for it, or what have you,  
 10 we couldn't stand up and say there is no  
 11 answer to that question. They would give a  
 12 key message to direct us to a potential  
 13 response, not necessarily an exact answer to  
 14 the question.  
 15 COFFEY, Q.C.:  
 16 Q. What was wrong with just standing up and  
 17 saying we don't know; we're endeavouring to  
 18 find out, but we don't know the answer?  
 19 MR. OSBORNE:  
 20 A. Because there would have been -- while there  
 21 wasn't an exact answer to a specific question,  
 22 there would have been information to that  
 23 question, there would have been information  
 24 provided that would give some insight perhaps  
 25 or, you know -- I mean, having said that -- I

Page 118

1 believe, Mr. Coffey, I understand where you're  
 2 going and --  
 3 COFFEY, Q.C.:  
 4 Q. Well, the question was raised here yesterday  
 5 with Mr. Ottenheimer.  
 6 MR. OSBORNE:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. And I --  
 10 MR. OSBORNE:  
 11 A. Unfortunately, I didn't see that. I was  
 12 waiting patiently to go on, but -- you know,  
 13 so I'm not sure what Mr. Ottenheimer's  
 14 response was, but I --  
 15 COFFEY, Q.C.:  
 16 Q. In your case, I'm interested in your view.  
 17 MR. OSBORNE:  
 18 A. Yeah.  
 19 COFFEY, Q.C.:  
 20 Q. I mean, you've been in politics a while.  
 21 MR. OSBORNE:  
 22 A. Yeah.  
 23 COFFEY, Q.C.:  
 24 Q. You've been a Minister. Certainly Health is  
 25 an onerous portfolio. There's no other

Page 119

1 briefing note early on certainly in your  
 2 tenure as Minister that deals with the ER/PR  
 3 issue other than this type of briefing note,  
 4 this formatted one.  
 5 MR. OSBORNE:  
 6 A. That's correct.  
 7 COFFEY, Q.C.:  
 8 Q. So this is your primary way of, at least in a  
 9 written form, obtaining information about the  
 10 issue?  
 11 MR. OSBORNE:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. So the question arises, well, if the  
 15 anticipated questions are posed in bold print,  
 16 bold format --  
 17 MR. OSBORNE:  
 18 A. Uh-hm.  
 19 COFFEY, Q.C.:  
 20 Q. And the heading in bold print following that  
 21 is key messages, and none of those key  
 22 messages actually answer the questions --  
 23 MR. OSBORNE:  
 24 A. No, you're --  
 25 COFFEY, Q.C.:

Page 120

1 Q. So where do --  
 2 MR. OSBORNE:  
 3 A. Not directly, no.  
 4 COFFEY, Q.C.:  
 5 Q. Where do you go looking for the answers, as  
 6 Minister?  
 7 MR. OSBORNE:  
 8 A. I think it's fair to say, and in every  
 9 department that I've been in, understanding  
 10 that this was the format of question and  
 11 answer briefing notes particularly, I did have  
 12 a common mantra, I guess if you want to call  
 13 it that, that I would repeat, and I did so on  
 14 a number of occasions within Health that, you  
 15 know, don't just give me the answers that you  
 16 want me to give, don't just give me suggested  
 17 answers, give me whatever information we have,  
 18 and give me your suggested answers and I will  
 19 determine what answers I provide to a  
 20 question, and I would -- you know, I did that  
 21 because as opposed to giving me "tops of the  
 22 trees" answers, or "tops of the trees"  
 23 suggested responses, I wanted to have a  
 24 greater understanding of issues, generally  
 25 speaking. Having said that, I do want to go

Page 121

1 back to a question that you had asked me  
 2 earlier. I mean, I understood that this was  
 3 primarily under the management of Eastern  
 4 Health and I understood it was a complex  
 5 issue, and I understood that because of the  
 6 complexity of the issue that I wouldn't  
 7 understand everything they had to offer.  
 8 Having said that, I did ask questions and I  
 9 recognized that the key messages didn't answer  
 10 all of the questions. I mean, as an example,  
 11 early on, and to put it into context, I had a  
 12 heck of a lot of information coming in in my  
 13 early weeks; in fact, my early months at  
 14 Health. So I absorbed primarily what was on  
 15 the briefing notes and had that explained, but  
 16 very early in my mandate as Minister of  
 17 Health, I certainly would have probed to get  
 18 more direct answers to the anticipated  
 19 questions in briefings and so on.  
 20 COFFEY, Q.C.:  
 21 Q. I don't know if you'll be -- if we could,  
 22 please, I'm going to ask now that certain  
 23 exhibits be entered, please. Just a second  
 24 now, Commissioner. Yes, P-0166 through P-  
 25 0199.

Page 122

1 THE REGISTRAR:  
 2 Q. Excuse me, Mr. Coffey, but I do believe that  
 3 0199 is the one that's going to be entered by  
 4 Mr. Pritchard.  
 5 MR. OSBORNE:  
 6 A. Oh, I'm sorry, I apologize.  
 7 THE COMMISSIONER:  
 8 Q. 0198 is on my list.  
 9 THE REGISTRAR:  
 10 Q. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. I have another one -- I have an even newer  
 13 version apparently. Up to 0198 then.  
 14 THE COMMISSIONER:  
 15 Q. All right, then so we'll enter P-0166 through  
 16 to P-0198.  
 17 EXHIBITS ENTERED AND MARKED AS P-0166 THROUGH TO P-0198.  
 18 COFFEY, Q.C.:  
 19 Q. Now in that vein, if you could bring up,  
 20 please, Exhibit P-0190.  
 21 THE COMMISSIONER:  
 22 Q. Now you have in front of you --  
 23 COFFEY, Q.C.:  
 24 Q. A mouse.  
 25 THE COMMISSIONER:

Page 123

1 Q. A mouse which controls the screen in front of  
 2 you if you feel the need to do so. The  
 3 exhibits will be there, and I suspect you've  
 4 also been given paper copies of the exhibits.  
 5 COFFEY, Q.C.:  
 6 Q. Now these are, and I appreciate you've never  
 7 seen these, I anticipate, these are excerpts  
 8 from notes kept by George Tilley, we  
 9 understand, but if we could go, please, to  
 10 page three. I've referred to it because of  
 11 your remark just then. A lot of it is  
 12 redacted because it's not relevant to the  
 13 Commission's mandate, but number six, the  
 14 Minister of the time, and this page will end  
 15 up being dated within the notebook as November  
 16 of '06, which is your tenure, "Minister works  
 17 differently than others, must respect the  
 18 Minister's approach, makes up his own mind",  
 19 which seemingly reflects what you just told us  
 20 then about your own view. You would get a  
 21 briefing note, wouldn't necessarily accept the  
 22 suggested -- I'm sorry, the key messages,  
 23 information contained therein, and you'd make  
 24 up your own mind based upon what was there in  
 25 the key messages, but elsewhere in the

Page 124

1 information and decide how you wanted to  
 2 answer questions?  
 3 MR. OSBORNE:  
 4 A. That's correct.  
 5 COFFEY, Q.C.:  
 6 Q. Okay, which is consistent with somebody making  
 7 up their own mind, okay, and Mr. Tilley  
 8 apparently had noted it about you. Now you  
 9 said that -- in answering that point, you said  
 10 that they are the key messages that you want  
 11 me -- he would say that you want me to give.  
 12 Of course, not you, as myself here, but you  
 13 want me to give. Who's the "you" in this  
 14 context? I take it, the "you" is the Deputy  
 15 Minister and the ADM?  
 16 MR. OSBORNE:  
 17 A. Yes, well --  
 18 COFFEY, Q.C.:  
 19 Q. And the Director of Communications?  
 20 MR. OSBORNE:  
 21 A. Yeah. I guess, to add more clarity, it would  
 22 be the Department.  
 23 COFFEY, Q.C.:  
 24 Q. The Department.  
 25 MR. OSBORNE:

Page 125

1 A. Yeah, instead of just accepting, you know, the  
 2 "tops of the trees" suggested responses, I  
 3 would often ask questions to probe for greater  
 4 detail, and I -- you know, again I had asked  
 5 for greater detail on all briefing notes.  
 6 COFFEY, Q.C.:  
 7 Q. Did you ever raise with your officials the  
 8 notion or idea that perhaps we should just  
 9 change the format of these entirely to suit me  
 10 in my style as Minister?  
 11 MR. OSBORNE:  
 12 A. No, I didn't. I think it would be fair to say  
 13 that this is the standard approach throughout  
 14 Government and oftentimes these briefing notes  
 15 would be shared with other departments or  
 16 central agencies, and it was the accepted  
 17 standard approach.  
 18 COFFEY, Q.C.:  
 19 Q. If we could, please, Exhibit P-0123. Now  
 20 these are "Government or Newfoundland Briefing  
 21 Note Guidelines". The Table of Contents; the  
 22 overview, when to prepare briefing notes,  
 23 types of briefing notes, points to keep in  
 24 mind for all briefing notes, format for  
 25 question and answer briefing notes, writing a

Page 126

1 question and answer briefing note, format for  
 2 briefing note for general issues, writing a  
 3 briefing note for general issues. These go on  
 4 for some -- this particular version of the  
 5 guidelines goes on for some eleven pages. Go  
 6 to page 11, please, and that's the last page  
 7 of the Exhibit. Now in terms of this, if we  
 8 could go back, please, to page seven. Now  
 9 this is a section or Part VI, writing a  
 10 question and answer briefing note, and it has  
 11 the title, the issue, and anticipated  
 12 questions, and the people who prepared the  
 13 guideline note under anticipated questions,  
 14 "This section identifies questions most likely  
 15 to be asked of the Premier/Minister by the  
 16 media or in the House of Assembly. The  
 17 questions could be broad based questions  
 18 relating to policy or they could be specific  
 19 to a situation or issue", and then presumably  
 20 the writer of these briefing notes is to use  
 21 traditional journalistic questions, and here  
 22 in bold print caps, "who, what, when, where,  
 23 why, how", and they have a number of examples.  
 24 See that? So the people who are preparing  
 25 these apparently for you presumably would have

Page 127

1 had these guidelines or ones very similar  
 2 available to them. The second -- on page  
 3 eight of the exhibit and the briefing note  
 4 guideline, it says -- the writers admonish,  
 5 "Asking yourself such questions will help  
 6 determine the precise questions to apply to  
 7 the issue, situation, development that is the  
 8 subject of the briefing note. In the briefing  
 9 note, the specific question should be asked in  
 10 bullet form". Then under key message, Mr.  
 11 Osborne, it says, "This section should include  
 12 the key message that needs to be presented on  
 13 this particular issue". Of course, that  
 14 doesn't say answer the question, it says,  
 15 include the key message or messages that needs  
 16 to be presented on this particular issue. In  
 17 practice, did you find that the key messages  
 18 parts of your briefing notes tended to include  
 19 the key messages that needed to be presented  
 20 rather than at times answer the question?  
 21 MR. OSBORNE:  
 22 A. I think there was a combination of both.  
 23 COFFEY, Q.C.:  
 24 Q. Okay. Sometimes the question would be  
 25 answered fully or partially, sometimes not at

Page 128

1 all?  
 2 MR. OSBORNE:  
 3 A. That's correct.  
 4 COFFEY, Q.C.:  
 5 Q. Did you ever send back any briefing notes,  
 6 like the drafts of them saying, you know, kind  
 7 of effectively, having read it, effectively  
 8 saying "You got to be kidding."  
 9 MR. OSBORNE:  
 10 A. No.  
 11 COFFEY, Q.C.:  
 12 Q. You know, and "I'm not saying that, and in  
 13 fact, why is it there at all?"  
 14 MR. OSBORNE:  
 15 A. No, I didn't. I always accepted these as the  
 16 Department's advice to me. It wasn't up to me  
 17 to determine what they wrote on a briefing  
 18 note, it was up to me to determine, you know,  
 19 the answers that I provide. And I think, I  
 20 mean, that goes back to my understanding of,  
 21 in large part, the executive's role was to  
 22 provide the best advice available to a  
 23 minister and it was up to a minister then or  
 24 government to decide how that advice is  
 25 implemented.



Page 129

1 COFFEY, Q.C.:

2 Q. Now, I take it from what you've told us

3 earlier that very often you saw in the key

4 messages listed or in the other suggested

5 responses that were provided in the briefing

6 notes, you interpreted that as the

7 Department's executive's view of what they

8 wanted you to give, their collective view, the

9 answers that they were suggesting you give to

10 certain questions?

11 MR. OSBORNE:

12 A. I saw it--I mean, I'd never seen the

13 guidelines for writing a briefing note; that's

14 the first time I'd see those. But I did see

15 it as (a), the Department's advice to me on

16 answers, but also I understood it to be the

17 best information that was available from the

18 Department on how to answer a question. I

19 never anticipated that they weren't providing

20 advice. I anticipated that these were

21 briefing notes which, I mean, you know, being

22 a briefing note would be brief answers or

23 brief suggested answers.

24 COFFEY, Q.C.:

25 Q. By definition, almost?

Page 130

1 MR. OSBORNE:

2 A. By definition. So I never understood it to be

3 necessarily the best media answer or the best-

4 -you know, I understood it to be the best

5 answer that the Department could develop to a

6 question. I understood, as well, that they

7 didn't always answer the questions, perhaps

8 because there was no direct answer available

9 to that question. But again, I often times

10 probed.

11 COFFEY, Q.C.:

12 Q. Now, in terms of that, wouldn't it have been

13 helpful as Minister to be, kind of, you know,

14 as an aside or in brackets to be told, there

15 isn't an answer that we have and then go on to

16 give the key message? In other words, to

17 inform you that there isn't any answer, to

18 explicitly tell you? Because you're the

19 Minister, as Minister, and your role is to

20 provide information to the public and you

21 certainly, in your career, never saw a

22 briefing note with a key message saying we

23 don't know the answer?

24 MR. OSBORNE:

25 A. No, I hadn't.

Page 131

1 COFFEY, Q.C.:

2 Q. No. You used the phrase several times, "tops

3 of the trees." And I take it that was to

4 describe your interpretation of the nature of

5 very many of these key messages, the key

6 messages were effectively tops of the trees

7 treatment of the anticipated questions topics?

8 MR. OSBORNE:

9 A. No, I wouldn't say that. I mean, that was my

10 personal message. It didn't reflect,

11 necessarily, the briefing notes as being tops

12 of the trees. But I would tell the

13 Department, I said it to the executive in the

14 Department of Environment and Conservation, in

15 the Department of Health and in the Department

16 of Justice, you know, that I didn't want them,

17 you know, whether it was in a briefing note or

18 in a verbal briefing, I didn't want them to

19 just give me the answers they thought I should

20 provide, I wanted them to give me the

21 information on an issue and the answers that

22 they felt best answered the questions or best

23 described the situation and I would use the

24 combination of both then to determine. And I

25 often said, to put that into context, I mean,

Page 132

1 if somebody threw me a curve ball, I wouldn't

2 be caught off guard if I knew the issue.

3 COFFEY, Q.C.:

4 Q. Um-hm.

5 MR. OSBORNE:

6 A. So I would ask them to inform me of the issue,

7 not just to inform me of what they felt I

8 needed to know to answer a question.

9 COFFEY, Q.C.:

10 Q. Now, if we could look at P-0125, page 8,

11 please? Now, this is your written

12 introduction to ER/PR?

13 MR. OSBORNE:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. In your first week you were in the Department.

17 There's a note there, the third bullet under

18 "Anticipated Question" is "What has been done

19 to correct this problem?" And the issue

20 having been framed above, "Breast cancer

21 patients are still looking for answers." Now,

22 under "Key Messages" the first one is, "Health

23 care is a priority for this government." fair

24 enough, and "Patient safety is first and

25 foremost." fair enough. It goes on to say,

Page 133

1 "The Department has been working closely with  
 2 Eastern Health since last May when it was  
 3 discovered that there was a problem with the  
 4 testing of tissue samples for breast cancer  
 5 patients with estrogen and progesterone,  
 6 ER/PR." Did you ask any questions about how  
 7 the Department had been working closely with  
 8 Eastern Health?  
 9 MR. OSBORNE:  
 10 A. No, I mean, I understood that, and you know, I  
 11 would have understood the role at that  
 12 particular time, and even still to a large  
 13 degree today, that officials within the  
 14 Department that had regular liaison with  
 15 Eastern Health, you know, would talk about  
 16 issues. And I mean, there may have been  
 17 advice back and forth between officials on  
 18 advice, but it didn't raise any alarms with me  
 19 -  
 20 COFFEY, Q.C.:  
 21 Q. Sorry, what, advice back and forth between  
 22 officials?  
 23 MR. OSBORNE:  
 24 A. I mean, on any issue, not necessarily this -  
 25 COFFEY, Q.C.:

Page 134

1 Q. I'm talking about ER/PR, so -  
 2 MR. OSBORNE:  
 3 A. I mean, there could have been advice back and  
 4 forth on issues. Again, having said that I  
 5 was informed that this was an issue that was  
 6 under the management of Eastern Health. But,  
 7 no, I didn't ask questions on that particular  
 8 sentence.  
 9 COFFEY, Q.C.:  
 10 Q. So there's an assertion here and it's not only  
 11 provided for your usage, but presumably is  
 12 provided to inform you by the permanent staff  
 13 in your Department that your Department has  
 14 been working closely with Eastern Health since  
 15 last May, and the details of any such close  
 16 working, you were not made privy to, you  
 17 didn't ask about it and they didn't really  
 18 volunteer?  
 19 MR. OSBORNE:  
 20 A. I think I mean, again, to put that into  
 21 context, I was informed that it was an issue  
 22 under the management of Eastern Health. If an  
 23 issue is under the management of Eastern  
 24 Health, I don't think anybody would suggest  
 25 that there wouldn't be communication back and

Page 135

1 forth on the issues still.  
 2 COFFEY, Q.C.:  
 3 Q. Yeah, and I appreciate the communication, but  
 4 this doesn't say communication, it says  
 5 "working closely with." So if there was such  
 6 working in a sense of presumably discussing  
 7 the issue, giving advice by the Department to  
 8 Eastern Health, if there was, you weren't made  
 9 privy to what it was?  
 10 MR. OSBORNE:  
 11 A. No, that sentence did not raise alarm,  
 12 especially--and again, I mean, to give full  
 13 context to the Commission and to others, my  
 14 early weeks and for that matter my early  
 15 months in the Department of Health and  
 16 Community Services I had a great deal of  
 17 information that I was required to absorb and  
 18 understand and that did not stand out at that  
 19 particular time to me as something that would  
 20 have been alarming, no.  
 21 COFFEY, Q.C.:  
 22 Q. See, that particular assertion in the first  
 23 key message, and we will see it, but it is  
 24 repeated in a briefing note of April 27th and  
 25 it's repeated in a briefing note of May 2nd,

Page 136

1 2006. It only is removed on May 18th, in the  
 2 May 18th, 2006 briefing note. So it wasn't  
 3 just the first time, but it was the first  
 4 number of times you got a briefing note on  
 5 this over the first couple of months, you were  
 6 being told that you're working, your  
 7 Department is working closely with Eastern  
 8 Health. But it was Eastern Health's issue to  
 9 deal with and it didn't occur to you to ask,  
 10 "Well, if it's their issue, what are we doing  
 11 working closely with them?" "What are we  
 12 doing?" ie, "What are we doing?" That didn't  
 13 occur to you at the time?  
 14 MR. OSBORNE:  
 15 A. No, that didn't occur. I mean, I have no  
 16 recollection of that particular sentence in  
 17 the briefing note standing out to me.  
 18 COFFEY, Q.C.:  
 19 Q. The second bullet certainly under "Key  
 20 Messages" relates to the test results or  
 21 retesting results coming back from Mount  
 22 Sinai, it having been for the most part  
 23 completed. The vast majority of results are  
 24 back and are in various stages of review.  
 25 "The process is taking time, but our primary

Page 137

1 concern is the patients' needs are being  
 2 addressed." So I take it even to this day do  
 3 you understand that from your perspective as  
 4 Minister that that was what you were being  
 5 told at the time, were you comfortable with  
 6 that?  
 7 MR. OSBORNE:  
 8 A. Yes, that did provide some level of comfort to  
 9 me. I mean, obviously, my main concern was  
 10 that the primary needs of the patients were  
 11 being met, that any patients, in particular,  
 12 who required a change in treatment would have  
 13 been informed and offered that change in  
 14 treatment. And you know, I think it's fair to  
 15 say that that was my main focus the entire  
 16 time I was at the Department of Health and  
 17 Community Services, on this issue.  
 18 COFFEY, Q.C.:  
 19 Q. Now, the third key message says, "A quality  
 20 review began immediately when the problem was  
 21 discovered. Eastern Health has had the method  
 22 of testing for ER/PR receptors reviewed by  
 23 external consultants. Their recommendations  
 24 have been implemented and the consultants  
 25 returned to Eastern Health in early April for

Page 138

1 an assessment of progress. It is expected  
 2 that Eastern Health will begin testing of new  
 3 patients in St. John's once the final  
 4 consultants' report has been received and  
 5 reviewed, likely in late May." Now, I presume  
 6 the drafter of this, because it says,  
 7 "returned to Eastern Health in early April,"  
 8 and this only dated March 15th, '06, so that's  
 9 just wrong tense. But other than that, what  
 10 did you interpret that to mean at the time?  
 11 MR. OSBORNE:  
 12 A. I understood that there were reports that had  
 13 been presented to Eastern Health in 2005, that  
 14 there were recommendations received by Eastern  
 15 Health, that the recommendations had been  
 16 implemented and the consultants would be  
 17 returning to Eastern Health to, you know, to  
 18 satisfy themselves that the recommendations  
 19 had, in fact, been implemented.  
 20 COFFEY, Q.C.:  
 21 Q. If we could go on then, please, to page 10 of  
 22 P-0125? So I take it that was your briefing  
 23 note going into the House, the March one we  
 24 just looked at?  
 25 MR. OSBORNE:

Page 139

1 A. That's correct.  
 2 COFFEY, Q.C.:  
 3 Q. Do you remember anything else about what you  
 4 were--about the briefing you obtained in  
 5 relation to ER/PR other than what's written  
 6 here in that March 15th briefing note,  
 7 anything else stand out in your mind?  
 8 MR. OSBORNE:  
 9 A. No, not at this time. Again, I mean, I was  
 10 absorbing a huge volume of information, so I  
 11 think initially I--you know, the initial  
 12 briefing book, I would have read the briefing  
 13 notes and the initial briefing on all of the  
 14 briefing notes contained within that briefing  
 15 book I simply would have asked that they  
 16 explain the briefing note to me. I can safely  
 17 say that initially because of the volume of  
 18 information and because of, you know, the time  
 19 lines with the House opening and the budget  
 20 coming down, that it's safe to say that I  
 21 wouldn't have probed too deeply in the first  
 22 couple of weeks because I had a great deal of  
 23 information to absorb.  
 24 COFFEY, Q.C.:  
 25 Q. And quite a number of issues?

Page 140

1 MR. OSBORNE:  
 2 A. And quite a number of issues.  
 3 COFFEY, Q.C.:  
 4 Q. Now, looking at pages 10 and 11 of Exhibit P-  
 5 0125, this is again a question and answer  
 6 briefing note, spring, 2006, Department of  
 7 Health and Community Services. And -  
 8 MR. OSBORNE:  
 9 A. What's the date on that, Mr. Coffey?  
 10 COFFEY, Q.C.:  
 11 Q. I'm sorry. This is one April 27th, 2006.  
 12 MR. OSBORNE:  
 13 A. Okay.  
 14 COFFEY, Q.C.:  
 15 Q. Mr. Osborne. Just turn to the second page  
 16 here just to bring up the date. It's April  
 17 27, 2006. This one is prepared by Debbie  
 18 Morris, approved by Moira Hennessey. Moira  
 19 Hennessey was your ADM for Regional Health  
 20 Authorities, I take it, Regional Health  
 21 Services?  
 22 MR. OSBORNE:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Did you understand she was the ADM primarily

Page 141

1 responsible for dealing with the ER/PR issue?  
 2 MR. OSBORNE:  
 3 A. Yes, I did.  
 4 COFFEY, Q.C.:  
 5 Q. Who was Debbie Morris?  
 6 MR. OSBORNE:  
 7 A. She would have been a health consultant who  
 8 worked under Moira Hennessey. I believe  
 9 that's the correct title that she held.  
 10 COFFEY, Q.C.:  
 11 Q. Okay. And -  
 12 MR. OSBORNE:  
 13 A. If I could point out something on this one?  
 14 COFFEY, Q.C.:  
 15 Q. Yes, go ahead.  
 16 MR. OSBORNE:  
 17 A. And, you know, having said that, I was very  
 18 particular over my briefing book and keeping  
 19 my briefing notes. But I do understand that  
 20 this briefing note here, the first page of  
 21 April 27th, and I've gone back to my book and  
 22 it has the same thing, but that briefing note,  
 23 the first page is identical to the first page  
 24 of May 2nd and -  
 25 COFFEY, Q.C.:

Page 142

1 Q. I was going to ask you about that, yeah.  
 2 MR. OSBORNE:  
 3 A. Okay. I think somehow they may have gotten  
 4 mixed up, so I'm not entirely sure that the  
 5 first page of this briefing note is, in fact,  
 6 the first page.  
 7 COFFEY, Q.C.:  
 8 Q. Which, and that's the first page of the -  
 9 MR. OSBORNE:  
 10 A. April 27th.  
 11 COFFEY, Q.C.:  
 12 Q. April 27th one.  
 13 MR. OSBORNE:  
 14 A. Because the last paragraph on the bottom of  
 15 the first page doesn't match up with the  
 16 first, or the second page, whereas on May 2nd  
 17 it does. So I'm not entirely sure if this is,  
 18 in fact, the first page of April 27th.  
 19 COFFEY, Q.C.:  
 20 Q. Yes.  
 21 MR. OSBORNE:  
 22 A. And unfortunately my briefing book has the  
 23 same thing, so I'm thinking when somebody  
 24 added May 2nd, maybe this page, back in May,  
 25 may have gotten mis--or replaced by mistake.

Page 143

1 COFFEY, Q.C.:  
 2 Q. While we're on that topic, these House of  
 3 Assembly briefing books, is there any or was  
 4 there at the time you were there within the  
 5 Ministry of Health and Community Services, was  
 6 there any kind of permanent record kept or  
 7 permanent repository of what these briefing  
 8 notes were, you know, in the sense of, like,  
 9 it's kind of signed off on April 27, that's  
 10 it, there's a permanent record kept over here  
 11 in a registry somewhere?  
 12 MR. OSBORNE:  
 13 A. That -  
 14 COFFEY, Q.C.:  
 15 Q. And what Tom Osborne as Minister goes and does  
 16 with his, you know, his copy, if he writes on  
 17 it or does whatever with it, fine. But did  
 18 the Department, to your knowledge, keep an  
 19 actual permanent record, you know, maintained  
 20 as to what briefing notes they were actually  
 21 giving you?  
 22 MR. OSBORNE:  
 23 A. I'm not certain of that. I wouldn't be able  
 24 to answer it.  
 25 COFFEY, Q.C.:

Page 144

1 Q. We will come to a briefing note, I believe  
 2 it's the March--I'm sorry, not March, November  
 3 6th, 2006. Just in terms of dealing with the  
 4 Commission here and preparing to come for the  
 5 interview by Commission co-counsel and when  
 6 you were preparing your information, did you  
 7 become aware that, in fact, at one point you  
 8 were the only one who had a copy of that  
 9 November 6th briefing note?  
 10 MR. OSBORNE:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. So you were advised at one point in preparing  
 14 for these hearings that the Department or the  
 15 Department's lawyers were telling you that "We  
 16 can't find that November 6th one and could we  
 17 please have a copy of yours, Mr. Osborne?"  
 18 MR. OSBORNE:  
 19 A. That's correct. I understood there was a  
 20 Freedom of Information request by the Evening  
 21 Telegram.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. Go ahead, yes.  
 24 MR. OSBORNE:  
 25 A. Yeah. And when I received my copy, because

Page 145

1 once they supply it to the Telegram, then they  
 2 supply a copy to us.  
 3 COFFEY, Q.C.:  
 4 Q. Um-hm.  
 5 MR. OSBORNE:  
 6 A. So I had noticed, you know, I had just gone  
 7 back to compare what they'd been provided with  
 8 to ensure that it was the same information  
 9 that I had and the November 6th note was not  
 10 there. So I had advised--I had contacted Reg  
 11 Locke, who was responsible for providing that,  
 12 and told him that I believe he overlooked a  
 13 November 6th note. And he had informed me  
 14 that, in fact, they didn't have a copy of  
 15 that, so I provided him with my copy.  
 16 COFFEY, Q.C.:  
 17 Q. Yes. Now, I can advise the Commission the  
 18 Department did subsequently come up with a  
 19 copy of it, but, which we have. But if there  
 20 was, I take it then, if there was any effort  
 21 being made to maintain a permanent record of  
 22 the briefing notes, Q and A briefing notes,  
 23 provided to you as Minister, it wasn't perfect  
 24 because at least at one point they couldn't  
 25 find one that you had?

Page 146

1 MR. OSBORNE:  
 2 A. Yes, that's correct.  
 3 COFFEY, Q.C.:  
 4 Q. Yeah. In terms of briefing notes and the  
 5 information contained in them, briefing notes,  
 6 for example, the one, the April 27th, 2006 one  
 7 at page 10 and 11 of P-0125, is prepared by  
 8 Debbie Morris, approved by Moria Hennessey, do  
 9 you know if any record was kept of where the  
 10 information contained in briefing notes came  
 11 from?  
 12 MR. OSBORNE:  
 13 A. I wouldn't be able to answer that. You know,  
 14 I'm not aware, no.  
 15 COFFEY, Q.C.:  
 16 Q. Okay. Because just even the first two we've  
 17 looked at, there's no actual signature or  
 18 initial anywhere on these. Like, it says  
 19 "Prepared by Debbie Morris, approved by Moira  
 20 Hennessey" but neither of them have signed by.  
 21 The March 15th, 2006 and the April 27, 2006  
 22 briefing notes have that, you know, they have  
 23 typed signatures, as it were, typed--you know,  
 24 the names are typed there?  
 25 MR. OSBORNE:

Page 147

1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. But there's nobody signing it, like, literally  
 4 with their hand. So I take it there was no  
 5 practice that people actually signed briefing  
 6 notes at that time?  
 7 MR. OSBORNE:  
 8 A. Not at that time, no.  
 9 COFFEY, Q.C.:  
 10 Q. And that changed, though, subsequently, didn't  
 11 it?  
 12 MR. OSBORNE:  
 13 A. It did, yes.  
 14 COFFEY, Q.C.:  
 15 Q. And we'll talk about that. Looking at the  
 16 April 27th, 2006 briefing note, as you point  
 17 out, it's identical to the--I shouldn't say--  
 18 well. The one that you have there, your copy  
 19 of it, under "Background" the bottom of the  
 20 page, how does the last line read? On the  
 21 first page.  
 22 MR. OSBORNE:  
 23 A. Oh, I'm sorry.  
 24 COFFEY, Q.C.:  
 25 Q. No, no, sure. On the first page. The last

Page 148

1 line.  
 2 MR. OSBORNE:  
 3 A. The last line of the first page?  
 4 COFFEY, Q.C.:  
 5 Q. Yes.  
 6 MR. OSBORNE:  
 7 A. "Had tested ER/PR negative in 2002 on a DAKO."  
 8 COFFEY, Q.C.:  
 9 Q. Okay, thank you. So we're looking at the same  
 10 sheet of paper. Here under "Key Message", if  
 11 we could just go up a little bit? I'm just  
 12 going to go up. The third bullet again refers  
 13 to this quality review began immediately. And  
 14 it's the same, same wording as the earlier  
 15 one.  
 16 THE COMMISSIONER:  
 17 Q. Same as we just saw.  
 18 COFFEY, Q.C.:  
 19 Q. Yes. So if we could go, then, to pages 12 and  
 20 13 of P-0125? This is a question and answer  
 21 briefing note and it's dated May 2nd, 2006.  
 22 Now, the first two we looked at, one is your  
 23 introduction to the Department and the opening  
 24 of the House of Assembly in March, 2006. The  
 25 April 27th one, do you recall why that was

Page 149

1 prepared?

2 MR. OSBORNE:

3 A. I don't recall offhand. I'm sure if I went

4 back and compared the March and April one, it

5 would stand out, but I don't recall offhand.

6 COFFEY, Q.C.:

7 Q. As to why. The May 2nd one now, 2006, do you

8 recall why this one was prepared? Just have a

9 look at it, if you like, the first page there.

10 MR. OSBORNE:

11 A. The consultants had returned from Eastern

12 Health.

13 COFFEY, Q.C.:

14 Q. Yes.

15 MR. OSBORNE:

16 A. Okay.

17 COFFEY, Q.C.:

18 Q. You have a keen eye because Key Messages, the

19 third bullet, the text is generally the same

20 as the earlier two we looked at earlier,

21 earlier in time, but this one in the second

22 sentence says, "Their recommendations," that

23 is, the consultants, "have been implemented

24 and the consultants returned to Eastern Health

25 in early April to assess of progress."

Page 150

1 Actually, no, it's the same wording. So is

2 there -

3 MR. OSBORNE:

4 A. Probably not so keen as we thought.

5 COFFEY, Q.C.:

6 Q. No, I thought, frankly, my sense of it too was

7 in keeping with yours, that by the beginning

8 of May the consultants would have been here

9 and gone, if indeed they did return in April.

10 So if we could, then, go to page 14 and 15 of

11 P-0125? It's the briefing note of May 18,

12 2006. Now this is a question and answer

13 briefing note. Just go to the second page

14 here. It's longer than the earlier three.

15 MR. OSBORNE:

16 A. Um-hm.

17 COFFEY, Q.C.:

18 Q. It's prepared by Debbie Morris, approved by

19 Moira Hennessey, dated May 18th, 2006. Now,

20 this particular one, the others had had three

21 anticipated questions, this one has a fourth,

22 which is, "What is government's response to

23 the Statement of Claim brought against Eastern

24 Health by the family of the late Michelle

25 Hanlon?" And there is a response to, or a key

Page 151

1 message relating to the fourth question, which

2 is "Government is unable to comment at this

3 time on the Statement of Claim due to the

4 legal proceedings." Now, with respect to that

5 point, what was your experience in terms of

6 what key message was being offered to you as

7 the Minister in relation to any circumstance

8 where there was a law suit on the go?

9 MR. OSBORNE:

10 A. This is perhaps the only issue that I had

11 dealt with at the Department that, during my

12 tenure, that as far as I recall that would

13 have had any information pertaining to legal

14 action, as far as I can recall.

15 COFFEY, Q.C.:

16 Q. So the Department's executive or the

17 Department as a whole was advising you that

18 you should respond, "The government is unable

19 to comment at this time on the Statement of

20 Claim due to the legal proceedings." Did you

21 understand that that was a common response or

22 a common suggested response?

23 MR. OSBORNE:

24 A. I had asked for a little more explanation on

25 that, obviously, at one of our House

Page 152

1 briefings. And I made a note on the bottom of

2 my briefing note "The Statement of Claim is

3 against Eastern Health."

4 COFFEY, Q.C.:

5 Q. Okay.

6 MR. OSBORNE:

7 A. And "It's before the court." And that would

8 be the reason that, you know, we can't provide

9 comment.

10 COFFEY, Q.C.:

11 Q. Sure, okay. Sir, one thing as we're looking

12 at these, I'm just going to ask the Registrar,

13 please, to turn back to P-0125, page 9, okay.

14 Now, there's a particular number I'm going to

15 direct your attention to. Mr. Osborne, under

16 the third bullet it talks about, "About 350

17 breast cancer tests are done annually in this

18 province. About 73 percent of all cancer

19 patients tested positive for ER and PR. These

20 patients are not impacted by the retesting.

21 The retesting involves about 27 percent of all

22 patients." See that?

23 MR. OSBORNE:

24 A. Yes.

25 COFFEY, Q.C.:

Page 153

1 Q. If we could go to page 11, please, which is  
 2 the April 27th, 2006 briefing note, third  
 3 bullet, same number 73 percent and 27 percent,  
 4 see that?  
 5 MR. OSBORNE:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. You go to page 13, please, of P-0125? Third  
 9 bullet, again same number, 73 percent, 27  
 10 percent. See those?  
 11 MR. OSBORNE:  
 12 A. Um-hm.  
 13 COFFEY, Q.C.:  
 14 Q. And page 15, please, of P-0125? Again, third  
 15 bullet, same percentages, 73 percent and 27  
 16 percent?  
 17 MR. OSBORNE:  
 18 A. This is the May 18th note?  
 19 COFFEY, Q.C.:  
 20 Q. May 18th, yes.  
 21 MR. OSBORNE:  
 22 A. Okay. Okay, yes.  
 23 COFFEY, Q.C.:  
 24 Q. Great. So as Minister, then, throughout the  
 25 spring of 2006 you understood, I take it, from

Page 154

1 this, what's written here, that the retesting  
 2 involved 27 percent of all patients?  
 3 MR. OSBORNE:  
 4 A. That's correct.  
 5 COFFEY, Q.C.:  
 6 Q. And that will come up again this afternoon,  
 7 okay. When in 2006, in the spring of 2006,  
 8 would the House have closed?  
 9 MR. OSBORNE:  
 10 A. I can't recall at this particular point. I  
 11 mean, certainly it would be either late May or  
 12 early June, but I can't recall.  
 13 COFFEY, Q.C.:  
 14 Q. So by May 18th, 2006, looking at page 14 of  
 15 Exhibit P-0125, use that or anything else you  
 16 need to assist you, what was your  
 17 understanding of what, if anything, had  
 18 happened on your watch in the spring of '06 up  
 19 to the time the house closed in terms of  
 20 ER/PR, what had happened?  
 21 MR. OSBORNE:  
 22 A. Well, all tests would have been received back  
 23 from Mount Sinai. As I recall, the external  
 24 consultants would have come back and looked at  
 25 the recommendations that were implemented by

Page 155

1 Eastern Health. As I recall and through my  
 2 briefing notes, actually, which assisted me in  
 3 recalling a number of the details because I  
 4 did make some notes, all results were at  
 5 various stages of review. I think at one of  
 6 the briefing notes, I can't recall which one  
 7 at this particular point, but it says there  
 8 that the consultants were very pleased with  
 9 the progress.  
 10 COFFEY, Q.C.:  
 11 Q. Okay.  
 12 MR. OSBORNE:  
 13 A. That they'd seen on the recommendations. You  
 14 know, so I think I'm not sure if that answers  
 15 your question.  
 16 COFFEY, Q.C.:  
 17 Q. Sure. So the sense of you as Minister during  
 18 the spring was the results are almost all  
 19 back, patients are being dealt with?  
 20 MR. OSBORNE:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. Individually, that consultants are coming  
 24 back, are back in April, reports will be in in  
 25 late May? Because here, according to this, in

Page 156

1 the first bullet of the May 18th one says,  
 2 "The consultants' final report has been  
 3 received and reviewed" likely in late May?  
 4 MR. OSBORNE:  
 5 A. Yes, that's correct.  
 6 COFFEY, Q.C.:  
 7 Q. What did you understand during that first  
 8 spring, as Minister of Health, as to how the  
 9 patients were being notified? Because you had  
 10 been aware that there was a lot of concern  
 11 expressed publicly, or at least a significant  
 12 amount of concern -  
 13 MR. OSBORNE:  
 14 A. I'll raise, you know, just my own observation  
 15 here. I know when we had done the pre-  
 16 inquiry, I think my mind was far more clear.  
 17 But after having listened to some of the other  
 18 testimony, I had listened to a little bit of  
 19 Minister Ottenheimer's yesterday, but Joan  
 20 Dawe's, listening to the media, I am finding  
 21 it difficult at this stage to distinguish  
 22 between what I know today and what I know  
 23 then, but I will endeavour to do the best I  
 24 can.  
 25 COFFEY, Q.C.:

Page 157

1 Q. Sure.

2 MR. OSBORNE:

3 A. If I recall correctly, I was informed that the

4 patients were being, that they had all been

5 contacted by Eastern Health to inform them

6 that there could be a concern and that as

7 quickly as results are returned from Mount

8 Sinai, reviewed by Eastern Health, that either

9 the patients or the patients' physicians were

10 being contacted to alert them that there could

11 be a change in treatment, for example.

12 THE COMMISSIONER:

13 Q. Did you understand they were related to just

14 patients whose treatment was being changed?

15 MR. OSBORNE:

16 A. Madam Commissioner, I think my understanding

17 at that particular point was that all patients

18 were contacted as the results came back. And

19 that's to the best of my recollection.

20 THE COMMISSIONER:

21 Q. So you believed there would be two contacts, a

22 contact to say there will be retesting and a

23 second contact after the return of the result?

24 MR. OSBORNE:

25 A. Yes, Madam Commissioner.

Page 158

1 THE COMMISSIONER:

2 Q. And for each of the commissioners--each of the

3 patients that, whose tests had been sent to

4 Mount Sinai?

5 MR. OSBORNE:

6 A. Yes.

7 THE COMMISSIONER:

8 Q. And in May you believed that all of the

9 patients had been identified? Did I

10 understand that correctly, as well?

11 MR. OSBORNE:

12 A. Yes, that would be correct. And I understood

13 that the test results had all been received

14 back from Mount Sinai.

15 COFFEY, Q.C.:

16 Q. And you would have understood that from your

17 officials in the Department?

18 MR. OSBORNE:

19 A. Yes, correct.

20 COFFEY, Q.C.:

21 Q. Your DM and your ADM?

22 MR. OSBORNE:

23 A. Yes. And according to the information

24 provided on the briefing note.

25 COFFEY, Q.C.:

Page 159

1 Q. Now, also dealing with the spring of 2006,

2 while we're there, if we could see Exhibit P-

3 0165, please?

4 MR. OSBORNE:

5 A. Mr. Coffey, what date would that be?

6 COFFEY, Q.C.:

7 Q. It's dated April 18th, 2006. It's not a

8 briefing note.

9 MR. OSBORNE:

10 A. Okay.

11 COFFEY, Q.C.:

12 Q. Okay. And I'd ask you to bear with me, it'll

13 be on the screen there in a second. Thank

14 you. Now, this is a document we, the

15 Commission, received, remember if it's Sunday-

16 -Sunday it was, Sunday as in two days ago from

17 counsel for Her Majesty. And it's on

18 Government of Newfoundland and Labrador

19 letterhead. It's addressed, it's Department

20 of Health and Community Services, Office of

21 the Minister dated April 18th, 2006. It's

22 addressed to Dr. Diponkar Banerjee, President

23 of The Canadian Association of Pathologists.

24 The address is in Ottawa. And at the bottom

25 there it's signed by yourself, Minister. And

Page 160

1 there's a CB MEM there, do you know who that

2 is?

3 MR. OSBORNE:

4 A. CB, I believe, would be Cathy Bradbury. She

5 would be the individual in the Department that

6 would be dealing with these types of matters.

7 The MEM, I'm not certain.

8 COFFEY, Q.C.:

9 Q. Okay.

10 MR. OSBORNE:

11 A. I would guess that that, it would probably be

12 the administrative assistant to Cathy

13 Bradbury.

14 COFFEY, Q.C.:

15 Q. Just a moment, please, Commissioner.

16 Actually, if we could look at page P-0165, I

17 think it's--just a second now. It's page 2,

18 same exhibit. Now, this is a letter from the

19 Canadian Association of Pathologists dated

20 February 1st, 2006. And it is addressed to

21 The Honourable John Ottenheimer, Minister of

22 Health and Community Services. And it's

23 received here, the Minister's office, says

24 February 9th, 2006, signed by Dr. Diponkar

25 Banerjee, President. And he's identified he's



Page 161

1 a Clinical Professor of Pathology and  
 2 Laboratory Medicine, University of British  
 3 Columbia, Program Leader, Cancer Pathology,  
 4 Director of Pathology and Laboratory Medicine,  
 5 British Columbia Cancer Agency. And it's cc'd  
 6 here and a registry stamp, some kind of a  
 7 code. EH would be Ed Hunt, do you think?  
 8 MR. OSBORNE:  
 9 A. Yes, that would be--that would certainly be my  
 10 guess.  
 11 COFFEY, Q.C.:  
 12 Q. This, I take it, if we go back up here to the  
 13 first page of this exhibit, you are responding  
 14 saying "This is to acknowledge receipt of your  
 15 correspondence dated February 1, 2006  
 16 regarding laboratory medicine specialists."  
 17 So that would be the letter, presumably, this  
 18 February 1, page--2006, page 2 of the Exhibit,  
 19 that's the letter you're responding to?  
 20 MR. OSBORNE:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. Now, the response here, sir, and you say  
 24 probably Cathy Bradbury drafted it, the CB  
 25 would -

Page 162

1 MR. OSBORNE:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. - indicate that to you. Ed Hunt worked in  
 5 which branch or which division?  
 6 MR. OSBORNE:  
 7 A. Medical Services.  
 8 COFFEY, Q.C.:  
 9 Q. Cathy Bradbury worked in which branch?  
 10 MR. OSBORNE:  
 11 A. She would have been directly involved with,  
 12 I'll see if I can get her exact title for you,  
 13 but she would have been directly involved  
 14 with, I think it was Director of Medical  
 15 Services, actually, was her title.  
 16 COFFEY, Q.C.:  
 17 Q. Would she have worked in the same group or  
 18 division as Mr. Hunt or Dr. Hunt or would it  
 19 be different?  
 20 MR. OSBORNE:  
 21 A. Well, Dr. Hunt would have been located, I  
 22 think his office was at the Belvedere  
 23 Building, if memory serves me correctly. And  
 24 Cathy Bradbury's office, I believe, was  
 25 actually within the Department.

Page 163

1 COFFEY, Q.C.:  
 2 Q. Do you know how it was that Cathy Bradbury  
 3 came to prepare this response that you signed?  
 4 MR. OSBORNE:  
 5 A. No, I don't. And certainly, I mean,  
 6 ministers very seldom actually draft their own  
 7 letters. They're generally drafted by an  
 8 individual within the Department and, you  
 9 know, if a minister agrees with what's there,  
 10 obviously the minister would sign.  
 11 COFFEY, Q.C.:  
 12 Q. Well, how did the subject matter of this  
 13 letter come to your attention?  
 14 MR. OSBORNE:  
 15 A. Well, it was in my file. I mean, any given  
 16 day in the Department there would be sometimes  
 17 as little as 20 or 30 pieces of correspondence  
 18 to sign and some days there would be 60 or 70  
 19 or more, you know. So it was, you know, it  
 20 was in my to be signed basket.  
 21 COFFEY, Q.C.:  
 22 Q. And I take it, though, that before signing a  
 23 letter such as this one, because I'm going to  
 24 refer you to some of the language in your  
 25 correspondence of April 18th of 2006 to the

Page 164

1 President of The Canadian Association of  
 2 Pathologists the tone of the letter is  
 3 somewhat confrontational, isn't it?  
 4 MR. OSBORNE:  
 5 A. It is. I received this letter or this Exhibit  
 6 late Sunday evening and when I received it, I  
 7 actually recalled it. If it had been any  
 8 other letter, I probably would have told you  
 9 today I don't recall that letter.  
 10 COFFEY, Q.C.:  
 11 Q. Um-hm.  
 12 MR. OSBORNE:  
 13 A. But because of the tone. And I can say that  
 14 it is not my nature to write this type of  
 15 letter or to speak in this type of fashion, so  
 16 I do recall the letter.  
 17 COFFEY, Q.C.:  
 18 Q. Okay. What do you recall about it? I take it  
 19 before signing this, you would have asked to  
 20 see the February 1, 2006 letter to John  
 21 Ottenheimer?  
 22 MR. OSBORNE:  
 23 A. That's -  
 24 COFFEY, Q.C.:  
 25 Q. You'd hardly send this letter out without

Page 165

1 seeing what Banerjee had actually written?  
 2 MR. OSBORNE:  
 3 A. That is correct.  
 4 COFFEY, Q.C.:  
 5 Q. Okay. Go ahead. Sorry.  
 6 MR. OSBORNE:  
 7 A. I recall speaking at that point with my Deputy  
 8 and at that stage, I mean, most letters would  
 9 go to the Deputy and then to me for signature.  
 10 But I recall speaking with the Deputy because  
 11 of the tone of the letter. And you know, I  
 12 did at the end of the day sign the letter, so  
 13 I accepted the tone. But I understood that  
 14 Dr. Banerjee was questioning the ability of  
 15 foreign-trained pathologists and indicating  
 16 that we weren't paying pathologists enough in  
 17 the province to attract quality pathologists.  
 18 And you know, so that would have been, to a  
 19 large degree, my understanding of the letter.  
 20 I think it's fair to say that the Department  
 21 had taken some exception with the fact that he  
 22 would question the credentials of a  
 23 pathologist simply because they were foreign  
 24 trained. And you know, I had accepted that,  
 25 that view, as well, as insulting to the

Page 166

1 pathologists. The letter of response going  
 2 back -  
 3 COFFEY, Q.C.:  
 4 Q. Okay. Could you just look, please, first of  
 5 all, though, at Dr. Banerjee's letter of  
 6 February 1st, 2006 to Mr. Ottenheimer?  
 7 MR. OSBORNE:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. Perhaps, Commissioner, because I'm not going  
 11 to finish this before lunch, you want to -  
 12 THE COMMISSIONER:  
 13 Q. Take the lunch break?  
 14 COFFEY, Q.C.:  
 15 Q. Yes, please. We'll come back to that.  
 16 MR. OSBORNE:  
 17 A. Certainly, okay.  
 18 THE COMMISSIONER:  
 19 Q. We'll commence at 2:00 today.  
 20 (RECESS)  
 21 (\*\* NOTE - AUDIO NOT TURNED ON \*\*)  
 22 COFFEY, Q.C.:  
 23 Q. ... 18th, 2006. And could you--before we  
 24 broke for lunch, I gather, your understanding  
 25 you were given by your officials was that

Page 167

1 somehow or another Dr. Banerjee was speaking  
 2 negatively of foreign-trained physicians?  
 3 MR. OSBORNE:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. That was the impression you had?  
 7 MR. OSBORNE:  
 8 A. That is correct.  
 9 COFFEY, Q.C.:  
 10 Q. Can you indicate to me, please, what about the  
 11 contents of the letter might lead one to  
 12 believe that?  
 13 MR. OSBORNE:  
 14 A. If you could give me a moment?  
 15 COFFEY, Q.C.:  
 16 Q. Oh, yes, take your time, yeah.  
 17 MR. OSBORNE:  
 18 A. I just want to review the letter for a second.  
 19 COFFEY, Q.C.:  
 20 Q. Sure, you go ahead.  
 21 MR. OSBORNE:  
 22 A. I guess in particular the third paragraph,  
 23 "Historically your province has relied heavily  
 24 on foreign-trained pathologists who are  
 25 unlikely to stay on in the province." In

Page 168

1 addition, he says in the second paragraph,  
 2 "You've already experienced a recent example  
 3 of the effects of not investing in high-  
 4 quality pathology." So, you know, obviously I  
 5 think the link was there that he was saying  
 6 that the foreign-trained pathologists were  
 7 perhaps not quality pathologists.  
 8 COFFEY, Q.C.:  
 9 Q. Okay, that was--is that a conclusion that you  
 10 reached or that was pointed out to you?  
 11 MR. OSBORNE:  
 12 A. No, I believe the--well, the letter would have  
 13 been drafted for my signature and ultimately I  
 14 signed the letter that was drafted -  
 15 COFFEY, Q.C.:  
 16 Q. Oh, yes.  
 17 MR. OSBORNE:  
 18 A. - so, you know, I think in the letter that is  
 19 drafted, it does point out that we took  
 20 exception with that.  
 21 COFFEY, Q.C.:  
 22 Q. See, the actual letter that Dr. Banerjee  
 23 wrote, the actual language used, is the third  
 24 paragraph begins, "Historically, your province  
 25 had relied heavily on foreign-trained

Page 169

1 pathologists who are unlikely to stay on in  
 2 the province as more attractive jobs come up  
 3 elsewhere in the nation." That in itself is  
 4 no reflection upon the abilities of foreign-  
 5 trained pathologists, is it?  
 6 MR. OSBORNE:  
 7 A. No, I think -  
 8 COFFEY, Q.C.:  
 9 Q. This means that they keep moving on, they come  
 10 here for a year or two or three and move on?  
 11 MR. OSBORNE:  
 12 A. No, you're correct in that paragraph in and of  
 13 itself. But if you put it into the context of  
 14 the letter in its entirety, I think it would  
 15 be--it wouldn't be unreasonable to make the  
 16 link.  
 17 COFFEY, Q.C.:  
 18 Q. Sure. Now, you just referred to the last  
 19 sentence in the second paragraph which reads,  
 20 "You have already experienced a recent example  
 21 of the effects of not investing in high-  
 22 quality pathology when the errors in breast  
 23 cancer estrogen receptor status were  
 24 discovered affecting hundreds of patients in  
 25 your province." And I take it before signing

Page 170

1 this April 18th letter that you did, you  
 2 considered this matter carefully?  
 3 MR. OSBORNE:  
 4 A. Before signing the letter -  
 5 COFFEY, Q.C.:  
 6 Q. Before, yeah.  
 7 MR. OSBORNE:  
 8 A. Before signing the letter I would have asked  
 9 why we were writing such a strongly-worded  
 10 letter. My knowledge of ER/PR is much greater  
 11 today than it would have been at that time.  
 12 COFFEY, Q.C.:  
 13 Q. Yes.  
 14 MR. OSBORNE:  
 15 A. And I think, you know, that that would be a  
 16 reasonable -  
 17 COFFEY, Q.C.:  
 18 Q. I'm sorry, what would be reasonable, that you  
 19 -  
 20 MR. OSBORNE:  
 21 A. That my knowledge today is much greater -  
 22 COFFEY, Q.C.:  
 23 Q. Oh, yes. No -  
 24 MR. OSBORNE:  
 25 A. - than it would have been, you know, just

Page 171

1 three, three or four weeks into the job.  
 2 COFFEY, Q.C.:  
 3 Q. But what I'm asking you is that you would have  
 4 looked at, though, carefully, the February 1st  
 5 letter that Dr. Banerjee had written? You  
 6 certainly from your--I appreciate you wouldn't  
 7 have had the same knowledge you do today, but  
 8 you would have read it carefully?  
 9 MR. OSBORNE:  
 10 A. I read the letter.  
 11 COFFEY, Q.C.:  
 12 Q. Yes.  
 13 MR. OSBORNE:  
 14 A. After I had read the letter of April 18th  
 15 addressed to Dr. Banerjee from -  
 16 COFFEY, Q.C.:  
 17 Q. Yourself?  
 18 MR. OSBORNE:  
 19 A. From myself, obviously I wondered why we were  
 20 writing such a strongly-worded letter, why  
 21 that letter was drafted for my signature. And  
 22 in looking at the letter that was sent by Dr.  
 23 Banerjee, you know, obviously the  
 24 understanding that I had was that he was  
 25 lobbying for additional pay for pathologists

Page 172

1 which I think is a reasonable understanding,  
 2 and that we had invested in poor-quality  
 3 pathology.  
 4 COFFEY, Q.C.:  
 5 Q. I'm sorry?  
 6 MR. OSBORNE:  
 7 A. That the province or Eastern Health had  
 8 invested in poor-quality pathology.  
 9 COFFEY, Q.C.:  
 10 Q. Was what you thought he was alleging, that was  
 11 your sense of it?  
 12 MR. OSBORNE:  
 13 A. Well, yes, he does say "By the lack of high-  
 14 quality pathologists."  
 15 COFFEY, Q.C.:  
 16 Q. "The effects of not investing in high-quality  
 17 pathology."  
 18 MR. OSBORNE:  
 19 A. Sorry, "Pathology."  
 20 THE COMMISSIONER:  
 21 Q. "Pathology."  
 22 COFFEY, Q.C.:  
 23 Q. Um?  
 24 THE COMMISSIONER:  
 25 Q. "Pathology."

Page 173

1 COFFEY, Q.C.:

2 Q. Yes, "pathology", yes.

3 MR. OSBORNE:

4 A. Yeah, I'm sorry, Madam Commissioner, in the

5 second paragraph it does say, "By the lack of

6 high-quality pathologists -

7 THE COMMISSIONER:

8 Q. "Pathology."

9 MR. OSBORNE:

10 A. - in the province."

11 THE COMMISSIONER:

12 Q. Wait now, I'm sorry, I'm not following where

13 you are then.

14 MR. OSBORNE:

15 A. Yes, the second paragraph, I'm sorry, Madam

16 Commissioner.

17 COFFEY, Q.C.:

18 Q. Yes, it's the second sentence in the

19 paragraph, Commissioner, it's the sentence

20 before the one I read to him because it refers

21 to both high-quality pathology, and Mr.

22 Osborne is correct, in the sentence before it

23 does say, "Not addressing this is false

24 economy, as patient care will be adversely

25 affected by the lack of high-quality

Page 174

1 pathologists in the province."

2 THE COMMISSIONER:

3 Q. Yes.

4 COFFEY, Q.C.:

5 Q. Now, sir, and then the need to send such a

6 strongly-worded letter as the April 18th one

7 to the President of The Canadian Association

8 of Pathologists I take it that that wasn't

9 your idea? I mean, and you accept the

10 responsibility for doing so, but the idea was

11 that of your Department?

12 MR. OSBORNE:

13 A. That's correct. I do accept, I mean, I signed

14 the letter so I accept responsibility for the

15 letter.

16 COFFEY, Q.C.:

17 Q. Yes.

18 MR. OSBORNE:

19 A. But you are correct, the letter was drafted

20 for my signature and I had read the letter and

21 ultimately signed the letter that was drafted

22 for my signature.

23 COFFEY, Q.C.:

24 Q. Did you ask Mr. Abbott about why are we

25 responding at all?

Page 175

1 MR. OSBORNE:

2 A. No -

3 COFFEY, Q.C.:

4 Q. Particularly in this fashion that they were

5 suggesting that you do?

6 MR. OSBORNE:

7 A. Well, yes, I mean, this is not a typical

8 letter that I would write, it's not the

9 language that I would generally use, so I did

10 ask why were writing such a very strong

11 letter.

12 COFFEY, Q.C.:

13 Q. And the explanation was?

14 MR. OSBORNE:

15 A. Was as I had explained, that you know, he had

16 asked about investing in pathologists. We

17 were in the process of doing so; we had gone

18 to Treasury Board within the province. So I

19 think my first paragraph back to him would

20 explain that, you know, not in detail, but

21 would explain that, you know, we were

22 addressing the issue or in the process of

23 addressing the issues identified with

24 compensation, to some degree. The second

25 paragraph is where we say, you know, "I do

Page 176

1 take exception to your suggestion that the

2 recent errors in breast cancer screening

3 experienced in this province were a result of

4 not having invested in high-quality

5 pathologists."

6 COFFEY, Q.C.:

7 Q. Now, sir, in your discussion with--so you

8 would have spoken to John Abbott about it. Do

9 you recall if anyone else was there?

10 MR. OSBORNE:

11 A. I don't recall, no.

12 COFFEY, Q.C.:

13 Q. Do you, to this day do you know who Dr.

14 Banerjee is?

15 MR. OSBORNE:

16 A. I now know. I've learned that yesterday -

17 COFFEY, Q.C.:

18 Q. Yesterday you learned. Yeah, I'm sorry, go

19 ahead.

20 MR. OSBORNE:

21 A. Yesterday I had learned that this, in fact, is

22 the same individual who is the author or one

23 of the authors of the report by external

24 consultants to Eastern Health and -

25 COFFEY, Q.C.:

Page 177

1 Q. In fact, it's P-0046, actually is the exhibit  
 2 and you'll see there on the screen, Mr.  
 3 Osborne, a letter, it's a covering letter from  
 4 the B.C. Cancer Agency, dated October 17th,  
 5 2005, addressed to Dr. Donald Cook. It's re:  
 6 "External Quality Review of the  
 7 Immunohistochemistry Service". And it's  
 8 signed by a Dr. D. Banerjee, Provincial  
 9 Program Leader, Cancer Pathology, Director of  
 10 Department of Pathology and Laboratory  
 11 Medicine. So he, in fact, was the  
 12 pathologist, chief pathologist, who was  
 13 retained by Eastern Health to come to St.  
 14 John's in September of 2005 to look at the lab  
 15 and the work there, okay?  
 16 MR. OSBORNE:  
 17 A. Yes.  
 18 COFFEY, Q.C:  
 19 Q. So I take it that before signing that letter  
 20 of April 18th, 2006, which is page 1 of P-  
 21 0165, Mr. Abbott didn't tell you or warn you  
 22 that this is the gentleman that you're dealing  
 23 with?  
 24 MR. OSBORNE:  
 25 A. I mean, I'm not sure if he was aware, but

Page 178

1 certainly I wasn't aware. If I had known, Mr.  
 2 Coffey, to be completely honest, if I had  
 3 known that this in fact was the same  
 4 individual, the letter that was addressed to  
 5 Dr. Banerjee and signed by me would never have  
 6 been signed, because this puts a completely  
 7 different perspective on the letter that he  
 8 had addressed to Minister Ottenheimer. And in  
 9 fact, you know, instead of believing that we  
 10 were sending a letter to the President of the  
 11 Canadian Association of Pathologists who was  
 12 lobbying for additional pay for pathologists,  
 13 it would have been viewed considerably  
 14 different as--I would have viewed it as some  
 15 insight being provided to us as to his  
 16 discoveries as a result of the external  
 17 consultant role that he had played.  
 18 COFFEY, Q.C:  
 19 Q. See, interestingly enough on that point, his  
 20 letter to Mr. Ottenheimer of February 1, 2006,  
 21 effectively was a suggestion that pathologists  
 22 be better paid in Newfoundland, that was -  
 23 MR. OSBORNE:  
 24 A. Yes.  
 25 COFFEY, Q.C:

Page 179

1 Q. He talked about potential consequences if they  
 2 weren't, but that's certainly--the message he  
 3 was sending is the one you took from it.  
 4 MR. OSBORNE:  
 5 A. That's correct.  
 6 COFFEY, Q.C:  
 7 Q. Okay. Interestingly enough, when we look at  
 8 P-0146, page 1, the covering letter, on  
 9 October 17th, 2005 you sent to Dr. Cook, he  
 10 does say in the second paragraph, "In  
 11 addition, please convey to Dr. Williams, Vice-  
 12 President of Medical Services that beyond the  
 13 specifics of my report, there should be  
 14 recognition of the following issues that have  
 15 bearing on the sustainability of a high  
 16 quality laboratory program." First bullet:  
 17 "Pathologists' compensation should be  
 18 competitive with those of other provinces;  
 19 otherwise your department will face ongoing  
 20 staff turn-over as pathologists move to more  
 21 rewarding positions elsewhere. Unless this  
 22 "revolving door" syndrome is dealt with, it  
 23 will only lead to deterioration of the quality  
 24 of staff as you will continue to lose your  
 25 best people." And he goes on then about the

Page 180

1 need to invest in sub-specialization,  
 2 continuing education and central pathology  
 3 review for the entire province. But in terms  
 4 of that first bullet, that effectively is the  
 5 same message as was in his February 1st  
 6 letter, wasn't it?  
 7 MR. OSBORNE:  
 8 A. It was part of the same message.  
 9 COFFEY, Q.C:  
 10 Q. Yes.  
 11 MR. OSBORNE:  
 12 A. The other part of the message, as I read it,  
 13 as was explained to me, which I did take  
 14 exception to, was the focus on foreign trained  
 15 pathologists and I would submit that, you  
 16 know, some of the best physicians, doctors,  
 17 specialists that we have in this province have  
 18 been foreign trained.  
 19 COFFEY, Q.C:  
 20 Q. Did you take--did it ever cross your mind to  
 21 ask where Dr. Banerjee might have been  
 22 trained?  
 23 MR. OSBORNE:  
 24 A. No, it had not, no.  
 25 COFFEY, Q.C:

Page 181

1 Q. And again, I'm not expressing any suggestion  
 2 of where he was trained or wasn't trained, but  
 3 it didn't cross your mind?  
 4 MR. OSBORNE:  
 5 A. No.  
 6 COFFEY, Q.C:  
 7 Q. And would you agree, though, the first bullet  
 8 in the letter to Dr. Cook of October 17th,  
 9 certainly talks about "revolving door syndrome  
 10 leading to deterioration of the quality of  
 11 staff as you continue to lose your best  
 12 people, i.e. a revolving door, people come and  
 13 leave." And that's the same thing as is in  
 14 his letter?  
 15 MR. OSBORNE:  
 16 A. I would agree--well it's part of the same  
 17 thing that was in his letter. I would agree  
 18 with that statement and in fact, him lobbying  
 19 in his letter, the part of his letter that  
 20 focussed on additional pay for pathologists is  
 21 not what I had taken exception to, not what  
 22 the department had taken exception to and in  
 23 fact, in my first or second paragraph in the  
 24 letter addressed to Dr. Banerjee, we had  
 25 indicated that we were taking measures to try

Page 182

1 to address that concern.  
 2 COFFEY, Q.C:  
 3 Q. Yes, and in fact, there is other  
 4 correspondence signed by you, during your  
 5 ministry, I take it, in relation to that. You  
 6 were lobbying to have pathologists better  
 7 paid?  
 8 MR. OSBORNE:  
 9 A. Yes, I had gone to the department, including  
 10 myself, had gone to Treasury Board on two  
 11 occasions. We met with Minister Sullivan -  
 12 COFFEY, Q.C:  
 13 Q. And I'll be dealing with that, but I want to  
 14 acknowledge right now that there is certainly  
 15 documentation that supports the ascertain -  
 16 MR. OSBORNE:  
 17 A. And I, you know, I mean let me be clear that I  
 18 agreed with Dr. Banerjee on his lobbying for  
 19 additional pay, that's not what I had taken  
 20 exception to. And I will say that I  
 21 recognized the shortage of pathologists, not  
 22 only in the province, but on a national basis  
 23 and the fact that the country are not  
 24 graduating enough pathologists to fill the  
 25 need across the country, so there were, you

Page 183

1 know, very serious concerns with the shortage  
 2 of pathologists and one of the areas that I  
 3 saw that was required to correct that, which  
 4 is what I had no exception taken to Dr  
 5 Banerjee's letter, was the fact that we needed  
 6 higher compensation for pathologists. And  
 7 that was something that I was working towards.  
 8 COFFEY, Q.C:  
 9 Q. Now sir, in the third paragraph of your letter  
 10 of April 18th, 2006, the last paragraph, okay,  
 11 if you could bring up, please, P-0165, page 1.  
 12 Thank you. Okay, you begin by saying, "I do  
 13 take exception to your suggestion that the  
 14 recent errors in breast cancer screening  
 15 experienced in this province were as a result  
 16 of not having invested in high quality  
 17 pathologists." Now, sir, did you at that  
 18 point have any idea of what had caused the  
 19 problem or problems?  
 20 MR. OSBORNE:  
 21 A. No, and likewise, I mean if I was writing a  
 22 letter simply to the President of the Canadian  
 23 Pathology Association, who was writing a  
 24 letter to lobby for additional pay, it would  
 25 be premature, I think, for either myself or

Page 184

1 that individual, had that not been one of the  
 2 co-authors of a report, to make the assertion  
 3 that that was the cause of the problem.  
 4 COFFEY, Q.C:  
 5 Q. Did it cross your mind to question well why is  
 6 this man, he's identified as the President of  
 7 the Canadian Association of Pathologists, how  
 8 does he know or purport to know what the cause  
 9 was or what the potential cause was?  
 10 MR. OSBORNE:  
 11 A. You know, that's -  
 12 COFFEY, Q.C:  
 13 Q. I mean, did it cross your mind? Did your  
 14 staff raise that with you?  
 15 MR. OSBORNE:  
 16 A. No, nobody brought to my attention that this  
 17 individual, in fact had a greater knowledge -  
 18 COFFEY, Q.C:  
 19 Q. Than he perhaps should  
 20 MR. OSBORNE:  
 21 A. Than he perhaps should.  
 22 COFFEY, Q.C:  
 23 Q. If he was a disinterested observer. If he was  
 24 a disinterested observer, just simply a  
 25 lobbyist on behalf of getting better

Page 185

1 remuneration for pathologists, he had, when  
 2 you look back and we are going to look back at  
 3 it, his letter to Mr. Ottenheimer, he had a  
 4 certain insight, didn't he?  
 5 MR. OSBORNE:  
 6 A. Absolutely and you know, let me say again,  
 7 because I think it's fair to say that had I  
 8 known who Dr. Banerjee was, that he was in  
 9 fact one of the external consultants, that  
 10 would have given me a completely different  
 11 insight into his letter than I had gathered  
 12 from his letter, without that knowledge.  
 13 COFFEY, Q.C:  
 14 Q. Now you're satisfied in your own mind, I take  
 15 it, that John Abbott, your Deputy Minister,  
 16 spoke to you about the contents of your letter  
 17 of April 18th, 2006?  
 18 MR. OSBORNE:  
 19 A. I recall simply because it's not the type of  
 20 language that I would use.  
 21 COFFEY, Q.C:  
 22 Q. Sure, so you're comfortable that, "I was  
 23 briefed by Mr. Abbott on this point or on this  
 24 issue."  
 25 MR. OSBORNE:

Page 186

1 A. Well being new into the department, yes, I can  
 2 say that I am certain that I raised the issue  
 3 and, you know, I will also say--and preamble  
 4 by saying that I have no idea who would have  
 5 recognized Dr. Banerjee or who would not have,  
 6 but I have no reason to believe that Mr.  
 7 Abbott at that time would have recognized the  
 8 name.  
 9 COFFEY, Q.C:  
 10 Q. Well, if we could pick a couple at random,  
 11 Exhibit C-0124.  
 12 THE COMMISSIONER:  
 13 Q. C?  
 14 COFFEY, Q.C:  
 15 Q. I apologize, I was focussing on the number,  
 16 rather than the letter. P-0124, page two,  
 17 please. And I appreciate this is before your  
 18 time, Mr. Osborne, but if you turn to the next  
 19 page, there's a briefing note of September  
 20 30th, 2005 on ER/PR, and just go back--oh yes,  
 21 there it is. Just before "Current Activities"  
 22 under the first part of it, the one, two,  
 23 three, four, fifth paragraph says, "An  
 24 external peer review by the chief pathologist  
 25 of the British Columbia Cancer Institute and

Page 187

1 as well chief technologist from Mount Sinai  
 2 was conducted September 15th to the 22nd,  
 3 2005." If we could go, please, to page 4.  
 4 This is the October 3rd, 2005 briefing note.  
 5 If we could go to the second page of it, which  
 6 is page 5 of the exhibit there, the second  
 7 last bullet notes: "An external peer review by  
 8 the chief pathologist of the British Columbia  
 9 Cancer Institute"--this is the external  
 10 reviewer or one of the two. If we could go,  
 11 please, to page 9 and this is the second page  
 12 of the November 7th, 2005 briefing note, again  
 13 for your predecessor, Mr. Ottenheimer. About  
 14 midway down through the background, that's the  
 15 one, two, three, four--sixth bullet, "A  
 16 quality review started in May has included an  
 17 internal review of testing processes and  
 18 external review by the chief pathologist at  
 19 the B.C. Cancer Institute. If we go to page  
 20 11, which is the December 5th, 2005 briefing  
 21 notes, second page of it and here, under the  
 22 sixth bullet again is a reference to "an  
 23 external review by the chief pathologist at  
 24 the B.C. Cancer Institute." So, sir if--and I  
 25 will be asking Mr. Abbott this in particular,

Page 188

1 but certainly the chief pathologist at the  
 2 B.C. Cancer Institute, it was certainly  
 3 apparent that that was the person, whoever he  
 4 or she might have been, that had been in St.  
 5 John's in September of '05. That was  
 6 certainly--I appreciate you weren't the  
 7 Minister at the time, but you would expect  
 8 John Abbott to have known that.  
 9 MR. OSBORNE:  
 10 A. Well, I mean, I can't comment on whether he  
 11 did or did not.  
 12 COFFEY, Q.C:  
 13 Q. Well, would you be very surprised if he hadn't  
 14 actually read those briefing notes?  
 15 MR. OSBORNE:  
 16 A. Well, I mean -  
 17 COFFEY, Q.C:  
 18 Q. You expected him to read the ones he was  
 19 giving you.  
 20 MR. OSBORNE:  
 21 A. Yes. I mean, I can't comment on whether or  
 22 not he would have read briefing notes or--I  
 23 mean, Dr. Banerjee is not mentioned by name,  
 24 the position is mentioned. I simply can't  
 25 comment on whether or not he would have known.

Page 189

1 COFFEY, Q.C:  
 2 Q. Okay. Now with respect to that, if we could,  
 3 Exhibit P-0165, please? Now in your letter,  
 4 this last paragraph, the second sentence goes  
 5 on about or says, "It has been recognized that  
 6 the tests associated with this procedure are  
 7 fraught with errors in reproduction, as well  
 8 as changes in national standards. Once the  
 9 possibility the patient slides may have been  
 10 misinterpreted was recognized, the Department  
 11 of Pathology was very proactive in scoping out  
 12 the magnitude of the issue, as well as  
 13 recommending a course of action to address the  
 14 problem." Now, sir, that suggests in fact  
 15 that at least a possibility as to the reason  
 16 for the problem was that the patient slides  
 17 may have been misinterpreted, wasn't it?  
 18 MR. OSBORNE:  
 19 A. It's a possibility, you know, it didn't rule  
 20 it out, nor did it say that it was the cause.  
 21 It simply says that the possibility that they  
 22 may have been misinterpreted, so it does raise  
 23 it as a possibility.  
 24 COFFEY, Q.C:  
 25 Q. So, sir, by April 18th, 2006, you in effect,

Page 190

1 at the end of your first month as Minister,  
 2 had had your attention focussed on what the  
 3 cause or causes were of the ER/PR problem?  
 4 That suggests, doesn't it, that someone had  
 5 brought to your attention, in fact your Deputy  
 6 Minister was asking you to sign a letter which  
 7 was at least referring to a potential cause of  
 8 the problem.  
 9 MR. OSBORNE:  
 10 A. A potential cause, it didn't recognize it as  
 11 the cause, nor did it rule it out as the  
 12 cause. I did ask shortly thereafter what the  
 13 cause was, you know.  
 14 COFFEY, Q.C:  
 15 Q. Okay and tell us about that, what happened  
 16 with respect to that?  
 17 MR. OSBORNE:  
 18 A. Well, I got on my own notes, on one of the  
 19 briefing notes -  
 20 COFFEY, Q.C:  
 21 Q. Yes, if we could, please, Commissioner, could  
 22 we have entered please, it's P-0314.  
 23 MR. OSBORNE:  
 24 A. Is that the May 2nd, Mr. Coffey?  
 25 COFFEY, Q.C:

Page 191

1 Q. Amongst others, yes, it includes the May 2nd  
 2 one.  
 3 THE COMMISSIONER:  
 4 Q. I don't believe that's been entered yet, has  
 5 it?  
 6 COFFEY, Q.C:  
 7 Q. It hasn't been, it would be entered now,  
 8 Commissioner, if you would please.  
 9 THE COMMISSIONER:  
 10 Q. All right, enter that.  
 11 EXHIBIT ENTERED AND MARKED P-0314.  
 12 COFFEY, Q.C:  
 13 Q. It's actually pages 3 and 4 of P-0314,  
 14 Commissioner. I'm sorry, Mr. Osborne, you  
 15 were about to say?  
 16 MR. OSBORNE:  
 17 A. Okay, I'm sorry, Mr. Coffey, yes, I mean,  
 18 these are some of the notes that I would have  
 19 made on my own personal briefing notes. They  
 20 were requested by the Commission several  
 21 months ago and provided to the Commission.  
 22 COFFEY, Q.C:  
 23 Q. And they certainly were and I thank you for  
 24 that.  
 25 MR. OSBORNE:

Page 192

1 A. I mean, at this stage of the game, in May is  
 2 perhaps when I would have felt a little more  
 3 comfortable that I was catching up, getting up  
 4 to speed on the vastness of the information in  
 5 the department. The last bullet there, "The  
 6 laboratory problem at the Health Sciences  
 7 Centre could be repeated across Canada.  
 8 COFFEY, Q.C:  
 9 Q. That's on the second page of the briefing  
 10 notes, page 4 of the exhibit, Commissioner.  
 11 There it is. In fact, it's underlined.  
 12 MR. OSBORNE:  
 13 A. So in fact I underlined that and would have  
 14 asked at a briefing meeting what in fact that  
 15 meant and obviously the response that I had  
 16 gotten back, because the note that I had made  
 17 on my briefing note, was that it could be a  
 18 systems error, not a lab error. And, so, you  
 19 know, that would have been the first time that  
 20 I would have been directed, I think, to the  
 21 fact that this could be a system's error, not  
 22 a laboratory error and I think there were  
 23 several times between then and the conclusion  
 24 of my tenure as Minister of Health that I  
 25 would have been given the same indication.



Page 193

1 COFFEY, Q.C:  
 2 Q. Now your understanding as of May 2nd, 2006,  
 3 having read that briefing note, was that what  
 4 type of investigations had been done as to  
 5 what had caused this?  
 6 MR. OSBORNE:  
 7 A. Well I knew that there had been external  
 8 consultants, there was an internal review.  
 9 COFFEY, Q.C:  
 10 Q. So you had understood that an internal review  
 11 had been done, it's concluded.  
 12 MR. OSBORNE:  
 13 A. Uh-hm. Well now I think the internal review  
 14 was still underway, the external -  
 15 COFFEY, Q.C:  
 16 Q. What type of internal review did you  
 17 understand was going on?  
 18 MR. OSBORNE:  
 19 A. Well they were reviewing within the lab, you  
 20 know, that they were doing and I think it may  
 21 reference that on the first page, "a quality  
 22 review began immediately when the problem was  
 23 discovered." I understood that there was an  
 24 internal review, as well as the external  
 25 consultants.

Page 194

1 COFFEY, Q.C:  
 2 Q. So it just says "a quality review began  
 3 immediately when the problem was discovered."  
 4 Third bullet on the first page.  
 5 MR. OSBORNE:  
 6 A. That's correct and I understood that there was  
 7 both an internal review by Eastern Health, as  
 8 well as the external reviews.  
 9 COFFEY, Q.C:  
 10 Q. And did you ask about the status of the  
 11 internal review, if there was one, what the  
 12 status was?  
 13 MR. OSBORNE:  
 14 A. Well I certainly would have, I don't know if  
 15 it was at this particular point, but I  
 16 certainly would have asked for updates on what  
 17 measures were being put in place, what Eastern  
 18 Health had felt the cause of the problem was.  
 19 COFFEY, Q.C:  
 20 Q. So who did you ask and what did they tell you?  
 21 MR. OSBORNE:  
 22 A. I mean, I can't recall exactly who, we're  
 23 going back a considerable period of time. I  
 24 know I had asked at briefing meetings within  
 25 the Department of Health, so I can feel fairly

Page 195

1 comfortable saying that yes, I was informed by  
 2 executive within the Department of Health that  
 3 this could be a system's error.  
 4 COFFEY, Q.C:  
 5 Q. So who are the possible members of the  
 6 executive in this context? John Abbott, I  
 7 take it, your DM; and Moira Hennessey, your  
 8 ADM?  
 9 MR. OSBORNE:  
 10 A. That would be correct.  
 11 COFFEY, Q.C:  
 12 Q. Anybody else that you can think of?  
 13 MR. OSBORNE:  
 14 A. No, I think they would be the individuals that  
 15 would have given me some insight into the  
 16 ER/PR issue.  
 17 COFFEY, Q.C:  
 18 Q. Now if you had been told in May 2nd, 2006 and  
 19 you understood by then that the external  
 20 reviewers had in fact been back to St. John's  
 21 to review the--or to give their view on how  
 22 effectively any recommendations that they had  
 23 made had been implemented, so in order to give  
 24 recommendations, you would have understood  
 25 that they actually had to do an examination to

Page 196

1 start themselves.  
 2 MR. OSBORNE:  
 3 A. That's correct.  
 4 COFFEY, Q.C:  
 5 Q. So they'd been in, as it turns out it was  
 6 September of '05, given their reports with  
 7 recommendations. Some period of months had  
 8 occurred where the recommendations had been  
 9 implemented because the tense uses past tense  
 10 "had" or "have been" and they're coming back  
 11 to check on the recommendations implementation  
 12 and in late May, I take it, there was--we  
 13 looked at that this morning, there was going  
 14 to be an update from them as to where that  
 15 stood. Did it ever cross your mind to ask,  
 16 well, you're talking about system's errors  
 17 verses what other type of error?  
 18 MR. OSBORNE:  
 19 A. Verses a lab error.  
 20 COFFEY, Q.C:  
 21 Q. Lab error, meaning an error by person or  
 22 persons, human error?  
 23 MR. OSBORNE:  
 24 A. That would be the way that I would interpret a  
 25 lab error.

Page 197

1 COFFEY, Q.C:  
 2 Q. Did it ever cross your mind to ask either Mr.  
 3 Abbott or Ms. Hennessey, well what did the  
 4 consultants find when they came in?  
 5 MR. OSBORNE:  
 6 A. I did ask, not in its entirety, I had asked  
 7 questions and I will say at the outset here  
 8 that looking back at this, I had asked a  
 9 number of questions, what the cause was, what  
 10 some of the recommendations were, what  
 11 measures were being put in place, but I had  
 12 not asked for the reports. And, you know, I  
 13 will admit that at this particular point, you  
 14 know, while I did ask what measures were being  
 15 put in place, what was the cause, what was the  
 16 root cause -  
 17 COFFEY, Q.C:  
 18 Q. Yes, because there is a reference to root  
 19 cause later on, a couple of months later, in  
 20 writing.  
 21 MR. OSBORNE:  
 22 A. Yes.  
 23 COFFEY, Q.C:  
 24 Q. So that was on your mind certainly by May,  
 25 June, July, root cause was on your mind?

Page 198

1 MR. OSBORNE:  
 2 A. Yes, I mean, again, you know, to put it into  
 3 context, my initial weeks for sure and my  
 4 initial months in the department, I had a huge  
 5 volume of information coming at me on a daily  
 6 basis, that's just to lay the context. I did  
 7 ask what the concerns were and what measures  
 8 were being put in place to fix it, you know,  
 9 what improvements were being made, what the  
 10 cause was, what the root cause was.  
 11 COFFEY, Q.C:  
 12 Q. So what were you told? What was the answer in  
 13 terms of root cause and that's a phrase that  
 14 you've used.  
 15 MR. OSBORNE:  
 16 A. Well I would have been told that they believed  
 17 it was a system's error. I mean, it was told  
 18 to me--in fact, it's on information that  
 19 Eastern Health had released to the media  
 20 during the middle of the summer as well, that  
 21 you know, this error could occur all across  
 22 the country if other labs had gone back and  
 23 done the same work that Eastern Health had  
 24 done. So, I mean, that had been -  
 25 THE COMMISSIONER:

Page 199

1 Q. I'm sorry, the word "system's error" could you  
 2 translate that for me, I mean as to what you  
 3 understood system's error would be?  
 4 MR. OSBORNE:  
 5 A. Yes, Madam Commissioner, I understood and  
 6 again, I will qualify my statement by saying  
 7 that I did rely on the professionals to  
 8 provide me advice, the oncologists,  
 9 pathologists, but based on the questioning  
 10 that I had, my understanding of what they  
 11 meant by system's error would have been the  
 12 DAKO system.  
 13 THE COMMISSIONER:  
 14 Q. Okay.  
 15 COFFEY, Q.C:  
 16 Q. Now you've indicated and you would have gotten  
 17 this understanding from either what Eastern  
 18 Health said in writing to the public and you  
 19 refer to the middle of the summer, a release  
 20 and we'll come to that, middle of summer of  
 21 '06, and as well what John Abbott and/or Moira  
 22 Hennessey was telling you verbally.  
 23 MR. OSBORNE:  
 24 A. Yes, and I feel relatively comfortable as  
 25 well, I mean, my recollection of my briefing

Page 200

1 notes is much greater because I've got those  
 2 and reading some of my notes, reading the  
 3 briefing notes on some of my own jot notes on  
 4 my briefing notes, would certainly remind me  
 5 of a number of things. I had tried to access  
 6 my calendar and unfortunately, that had been  
 7 lost on the system for whatever reason. They  
 8 could not provide that to me. I cannot tell  
 9 you when I met with Eastern Health or how  
 10 often I've met with Eastern Health. I can say  
 11 that I'm very certain that we've never met  
 12 with Eastern Health specifically on ER/PR, to  
 13 the best of my knowledge, but within other  
 14 meetings, I would have asked questions. And I  
 15 recall asking Eastern Health the same question  
 16 and their response to me as well, would have  
 17 indicated that they believed it would have  
 18 been because of the DAKO system.  
 19 THE COMMISSIONER:  
 20 Q. And you became Minister when again, I'm sorry,  
 21 I should have remembered this. You became  
 22 Minister of Health -  
 23 MR. OSBORNE:  
 24 A. In March of 2006, yes.  
 25 THE COMMISSIONER:

Page 201

1 Q. 19th, 17th?  
 2 MR. OSBORNE:  
 3 A. I believe, Madam Commissioner, I believe it  
 4 was March 14th.  
 5 THE COMMISSIONER:  
 6 Q. 14th, okay.  
 7 COFFEY, Q.C:  
 8 Q. Now, sir, I can appreciate the first month  
 9 you're there, as you said, you got a lot of  
 10 information coming at you. But by May 2nd,  
 11 you certainly understood or had your wits  
 12 about you enough to inquire as to, you know,  
 13 and to note you were being told this could be  
 14 a system error, not a lab error on May 2nd,  
 15 2006.  
 16 MR. OSBORNE:  
 17 A. That's correct.  
 18 COFFEY, Q.C:  
 19 Q. Can you offer any reason why you did not ask  
 20 to see the reports?  
 21 MR. OSBORNE:  
 22 A. No, I can't and I take responsibility for  
 23 that. Again, I had asked a number of  
 24 questions regarding what the cause was, what  
 25 steps were being put in place to correct it.

Page 202

1 You know, I think I was asking the right  
 2 questions, but the question that I did not ask  
 3 was give me a copy of the reports. And I  
 4 can't blame anybody for me not asking that, I  
 5 have to take responsibility for that.  
 6 COFFEY, Q.C:  
 7 Q. Now with respect to that, though, you were  
 8 also asking and using words like "root cause"  
 9 within ear shot of your Deputy Minister and  
 10 your Assistant Deputy Minister, not  
 11 necessarily on May 2nd, but there is a note  
 12 and "root cause" was a phrase that you used.  
 13 MR. OSBORNE:  
 14 A. Well I know that I had asked, because again,  
 15 there's a notation by my--by the department  
 16 senior policy advisor, Darrell Hynes, that I  
 17 had asked him and I believe that was in the  
 18 first week of August.  
 19 COFFEY, Q.C.:  
 20 Q. Yes, so -- and that will be coming up on the  
 21 screen shortly, but -- so you're asking why  
 22 did this happen, how could this happen, what  
 23 have they found out about what happened, and I  
 24 gather from what you're telling me, other than  
 25 a reference to or references to systems error,

Page 203

1 which you understood as DAKO, somehow  
 2 attributing the error to the DAKO machine, did  
 3 anyone ever tell you, for example, or let you  
 4 know that the DAKO machine, or at least a DAKO  
 5 machine was, in fact, and I gather with the  
 6 evidence forthcoming, was the type of machine  
 7 being utilized by Mount Sinai to do all the  
 8 retests?  
 9 MR. OSBORNE:  
 10 A. Nobody had indicated that to me, no.  
 11 COFFEY, Q.C.:  
 12 Q. And where you were never -- I'll put it to  
 13 you, were you ever actually clear as to what  
 14 caused the problem?  
 15 MR. OSBORNE:  
 16 A. No. In fact, I can say with certainty because  
 17 I made a note of it on November 23rd at the  
 18 briefing. I had asked a question there -- now  
 19 unfortunately I scratched it out at the same  
 20 meeting, it won't show on the screen if you  
 21 call it up as evidence, but you can see where  
 22 I asked and scratched it out. I did ask if it  
 23 had been finally determined that, in fact,  
 24 this was a systems error, and the response I  
 25 got back at the meeting, and I can't say with

Page 204

1 absolute certainty who said it, but I did make  
 2 a notation on the November 23rd note, you  
 3 know, could be a systems error, and then I  
 4 went on to say that "Eastern Health have full"  
 5 -- if I can bring that up just so that I'm not  
 6 --  
 7 COFFEY, Q.C.:  
 8 Q. You certainly can.  
 9 MR. OSBORNE:  
 10 A. So that I'm not going on memory.  
 11 COFFEY, Q.C.:  
 12 Q. If we could in the same Exhibit P-0314, it's  
 13 page 10. For those who are watching the  
 14 screen -- you go ahead and look at your piece  
 15 of paper if that's of assistance to you.  
 16 MR. OSBORNE:  
 17 A. Okay. At the bottom of the note, and you can  
 18 see it there at the bottom, I say -- I asked  
 19 if, in fact, we finally determined that this  
 20 was a systems error, and I wrote down there,  
 21 and it's very difficult to pick it out, but I  
 22 wrote down could be systems error, and then  
 23 underneath I wrote down what had been told to  
 24 me, "That Eastern Health have confidence in  
 25 their professionals". I remember them saying

Page 205

1 that they stand by their professionals and  
 2 don't believe that the concern was as a result  
 3 of errors by the professionals themselves. I  
 4 was later told that -- that was the response I  
 5 scratched out, the thing could be systems  
 6 error, because I was told at that meeting, and  
 7 I didn't want to inadvertently say it myself,  
 8 although I do see it in later media that has  
 9 been entered as exhibits, but I scratched that  
 10 out because I was told, as I recall, that the  
 11 issue, and this is the only connection to any  
 12 legal talk that was talked about on November  
 13 23rd, but the issue of error would be -- it  
 14 was before the courts and they were going to  
 15 leave it to the courts to make that final  
 16 decision.  
 17 COFFEY, Q.C.:  
 18 Q. So to come back then to the spring of '06,  
 19 your understanding before the House of  
 20 Assembly closed that spring, by the time  
 21 summer came along in St. John's, was that, as  
 22 you've noted on May 2nd, a briefing note on  
 23 the second page of it, page four of this  
 24 Exhibit, "Could be system error, not lab".  
 25 MR. OSBORNE:

Page 206

1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Now up on the top of that page there's some  
 4 handwriting. It says, "Newer better system  
 5 picked up error", and you've underlined  
 6 VANTANA.  
 7 MR. OSBORNE:  
 8 A. Yes, that's correct.  
 9 COFFEY, Q.C.:  
 10 Q. What is that about?  
 11 MR. OSBORNE:  
 12 A. Again I'm trying to remember what I was told  
 13 there, but, I mean, certainly I would have  
 14 been -- the indication based on my note would  
 15 be that the VANTANA System had picked up the  
 16 error where the DAKO System hadn't. I recall  
 17 being told that the VANTANA System was a more  
 18 sophisticated, or more automated, I believe  
 19 the words were, a more automated system and a  
 20 much more accurate system.  
 21 COFFEY, Q.C.:  
 22 Q. Go back to the first page of this exhibit --  
 23 not the exhibit, the briefing note of May 2nd,  
 24 if you could. The handwriting, "May 2, '06",  
 25 is yours, I take it, at the top of the page?

Page 207

1 MR. OSBORNE:  
 2 A. Now that I -- I would have written that there  
 3 when I provided the briefing note to you  
 4 simply because I wanted to put it back in the  
 5 briefing book that it belonged in.  
 6 COFFEY, Q.C.:  
 7 Q. Okay, and the handwriting, "One and two" under  
 8 anticipated questions is yours?  
 9 MR. OSBORNE:  
 10 A. That's correct.  
 11 COFFEY, Q.C.:  
 12 Q. Number one appears in key messages, so I take  
 13 it that's -- with the number one circled in  
 14 the key message is the answer to question  
 15 number one, such as it is?  
 16 MR. OSBORNE:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. And the number two circled, there's something  
 20 handwritten there. What is that?  
 21 MR. OSBORNE:  
 22 A. Contacted ASAP.  
 23 COFFEY, Q.C.:  
 24 Q. Meaning the patients were, I take it?  
 25 MR. OSBORNE:

Page 208

1 A. Yes. Well, I would have asked, you know, how  
 2 -- I guess, when are the patients contacted.  
 3 Again, I mean, that was -- that was my main  
 4 focus really was to ensure that they were  
 5 being contacted and here I was told that most  
 6 results are back, these results are in various  
 7 stages of review by the panel who will  
 8 interpret the results, and I would have asked  
 9 when are -- and that would be that the  
 10 patients are going to be contacted as quickly  
 11 as possible.  
 12 COFFEY, Q.C.:  
 13 Q. Now over here to the right hand side of that  
 14 page, it says, "Very pleased with  
 15 progress/results", and you've underlined in  
 16 that bullet, the third bullet under key  
 17 message, "Their recommendations have been  
 18 implemented and the consultants returned to  
 19 Eastern Health in early April to assess  
 20 progress", and I'm reading verbatim what is  
 21 written there. Could you tell us, please,  
 22 what that is about? I think you referred to  
 23 that this morning, a reference that you  
 24 understood or were given to understand that  
 25 the external consultants were very pleased

Page 209

1 with the progress?  
 2 MR. OSBORNE:  
 3 A. Yes. If I recall here, and again going on  
 4 memory, I was told that they were very pleased  
 5 with the progress and the results. There were  
 6 still a couple of items that they felt Eastern  
 7 Health had to do in order to have fully  
 8 implemented the recommendations.  
 9 COFFEY, Q.C.:  
 10 Q. Okay. If we could, please, Commissioner, have  
 11 brought up, please, Exhibit P-048. Now this  
 12 is one of the two reports from the spring of  
 13 '06. Have you ever seen this before?  
 14 MR. OSBORNE:  
 15 A. I've never seen this, no.  
 16 COFFEY, Q.C.:  
 17 Q. It is available on the internet, on the  
 18 website of the Commission, just to let you  
 19 know that.  
 20 MR. OSBORNE:  
 21 A. I mean, just to respond to that, I mean, I've  
 22 tried to focus on my own exhibits as opposed  
 23 to --  
 24 COFFEY, Q.C.:  
 25 Q. I appreciate that. I understand that, to

Page 210

1 explain why you haven't gone there before you  
 2 came here today.  
 3 MR. OSBORNE:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. And I do appreciate that. I'm not going to  
 7 take you through it verbatim today.  
 8 MR. OSBORNE:  
 9 A. No.  
 10 COFFEY, Q.C.:  
 11 Q. So if you want to look at it later, it will be  
 12 there. This is a letter -- the first page of  
 13 the exhibit is a letter. Scroll down here.  
 14 Trish Wegrynowski has written to Bob Williams,  
 15 VP Medical Services, May 2nd, 2006. It's  
 16 received May 4th, 2006, the Vice President  
 17 Medical Services stamp. The subject is,  
 18 "Quality reassessment review of the  
 19 immunohistochemistry laboratory", and she says  
 20 really effectively attached are four copies of  
 21 her report. If you go to the second page of  
 22 this exhibit, it's the actual cover page of  
 23 the report, and it's prepared by Trish  
 24 Wegrynowski. She identifies herself as a  
 25 pathology consultant from Ontario, May 2nd,

Page 211

1 2006. Now, sir, this report goes on for some  
 2 19 pages, okay, and if we could go, please, to  
 3 page 19 of the exhibit. The recommendations  
 4 are interspersed throughout the report, okay,  
 5 but certainly on page 17 of 19 of the report,  
 6 at that point she's gotten as far as  
 7 recommendations number 29, 30 -- well,  
 8 actually 30 is repeated, 31, and 32. So  
 9 there's certainly well over 30 recommendations  
 10 by her. Did your officials bring that to your  
 11 attention?  
 12 MR. OSBORNE:  
 13 A. No. In fact, at one point I did ask for some  
 14 of the recommendations. I think some of them  
 15 were provided in verbal briefings anyhow, but  
 16 to the best of my recollection, and I know  
 17 when we met with George Tilley at one point in  
 18 the executive boardroom at the Department of  
 19 Health, I'm pretty certain it was George -- I  
 20 can't say with full certainty, but I'm almost  
 21 100 percent certain I had asked what the  
 22 recommendations were and the response was  
 23 something to the effect that a number of the  
 24 recommendations are very technical in nature,  
 25 others are much more easily explained, and he

Page 212

1 had outlined what some of the recommendations  
 2 were, and I think those recommendations had  
 3 subsequently appeared in one of my November  
 4 briefing notes.  
 5 COFFEY, Q.C.:  
 6 Q. So Mr. Tilley advised you verbally of what  
 7 some of the recommendations were, and they  
 8 ended up in text in your briefing notes?  
 9 MR. OSBORNE:  
 10 A. That's correct.  
 11 COFFEY, Q.C.:  
 12 Q. And he attributed those recommendations to  
 13 these two external consultants?  
 14 MR. OSBORNE:  
 15 A. Well, that would --  
 16 COFFEY, Q.C.:  
 17 Q. That's what you understood?  
 18 MR. OSBORNE:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. Did he ever talk to you, that is Mr.  
 22 Tilley, Mr. Abbott, or Ms. Hennessey, ever  
 23 speak to you about the notion or idea that  
 24 those reports were secret?  
 25 MR. OSBORNE:

Page 213

1 A. No.  
 2 COFFEY, Q.C.:  
 3 Q. That they couldn't be shared with you or  
 4 outside a very small group of people, did they  
 5 ever bring that up with you?  
 6 MR. OSBORNE:  
 7 A. No, they did not.  
 8 COFFEY, Q.C.:  
 9 Q. Did they ever bring up with you the idea of  
 10 protection under Section 8.1 of the Evidence  
 11 Act?  
 12 MR. OSBORNE:  
 13 A. No.  
 14 COFFEY, Q.C.:  
 15 Q. And, frankly, in light of the actual wording  
 16 of Section 8.1, if they're actually sharing it  
 17 with you, one might wonder about that, but  
 18 that's just the lawyer in me talking, okay.  
 19 THE COMMISSIONER:  
 20 Q. That battle has already been fought.  
 21 COFFEY, Q.C.:  
 22 Q. I know, I appreciate it, yeah, but on that  
 23 point, but in terms of -- Commissioner, it  
 24 does raise an issue here because the context  
 25 in which these individuals saw this, I will be

Page 214

1 pursuing that, and with this Minister, they  
 2 certainly weren't telling you that this can't  
 3 be -- these reports, results, and  
 4 recommendations can't be made public. They  
 5 weren't telling you that?  
 6 MR. OSBORNE:  
 7 A. No.  
 8 COFFEY, Q.C.:  
 9 Q. They weren't telling you that they can't be  
 10 shared with you or the Department?  
 11 MR. OSBORNE:  
 12 A. No, I wasn't aware of that, no.  
 13 COFFEY, Q.C.:  
 14 Q. Now you would have understood that this was  
 15 these two external consultants second visit to  
 16 Newfoundland to that lab for each of them?  
 17 MR. OSBORNE:  
 18 A. Yes. Well, when they had come back to examine  
 19 whether or not their recommendations had been  
 20 implemented, I would have understood that that  
 21 would have been their second visit at least.  
 22 COFFEY, Q.C.:  
 23 Q. See there are 32 listed in that report in  
 24 Exhibit P-048, 32 recommendations. If we  
 25 could bring up Exhibit P-047, please, and go

Page 215

1 again to page 19. See that on the screen  
 2 there in front of you, Mr. Osborne?  
 3 MR. OSBORNE:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. This is again -- of course, this particular  
 7 report is dated November 9th, 2005, which is a  
 8 number of months before you arrived as  
 9 Minister of Health, but the last  
 10 recommendation on that page is recommendation  
 11 number 42, okay, and the report that came to  
 12 the Department during your tenure by Ms.  
 13 Wegrynowski has at least 32, maybe 33  
 14 recommendations. Did anyone tell you, any of  
 15 your officials tell you while you were  
 16 Minister that a number of her recommendations  
 17 were, in fact, just repetitions, or  
 18 admonishments to complete or to do a  
 19 recommendation that she had given them six or  
 20 seven months before? Did anybody tell you  
 21 that?  
 22 MR. OSBORNE:  
 23 A. I don't believe so.  
 24 COFFEY, Q.C.:  
 25 Q. Would you be surprised -- would that have

Page 216

1 caused you any concern if some of your  
 2 officials had said to you, look, some of the  
 3 recommendations we just got from her, or  
 4 Eastern Health just got from her, are in fact  
 5 repetitions, she's telling Eastern Health to  
 6 get on with doing what she told them to do  
 7 back in November, would that have surprised  
 8 you?  
 9 MR. OSBORNE:  
 10 A. It's difficult to answer that because I wasn't  
 11 told that. I mean, you know, if at some point  
 12 in the past I was, I would perhaps have put it  
 13 into the context of what I was being told at  
 14 the time.  
 15 COFFEY, Q.C.:  
 16 Q. Anyway, I take it then, other than those  
 17 couple of recommendations that eventually make  
 18 their way to one of your briefing notes, you  
 19 weren't being told a whole lot?  
 20 MR. OSBORNE:  
 21 A. Well, I wasn't --  
 22 COFFEY, Q.C.:  
 23 Q. They're pleased -- you were being told they're  
 24 pleased, that was the message?  
 25 MR. OSBORNE:

1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Now if we could, please -- before we pass on  
 4 to later that month, I'd just like to return  
 5 on P-0314, pages one and two, particularly  
 6 page one. This is your own version -- your  
 7 own copy of the working copy of the March  
 8 15th, 2006, briefing note we looked at this  
 9 morning. You have some handwritten notes on  
 10 it and there's underlining and so on. Is  
 11 there anything, in particular, that you wish  
 12 to bring to the Commissioner's attention that  
 13 we haven't already covered?  
 14 MR. OSBORNE:  
 15 A. I'm not sure -- I'm not sure if you're asking  
 16 me to identify something there or --  
 17 COFFEY, Q.C.:  
 18 Q. Okay, I'll just run down through it, and their  
 19 key messages, I think you've written to the  
 20 left hand side, "general", top left hand side  
 21 under the key messages.  
 22 MR. OSBORNE:  
 23 A. I'm sorry, which briefing note are we --  
 24 COFFEY, Q.C.:  
 25 Q. I'm sorry, on March 15th, '06.

1 MR. OSBORNE:  
 2 A. Yes, I believe that's --  
 3 COFFEY, Q.C.:  
 4 Q. External consultants.  
 5 MR. OSBORNE:  
 6 A. Yeah, that I believe is what I would have  
 7 meant there.  
 8 COFFEY, Q.C.:  
 9 Q. Toward the bottom of the page on the right  
 10 hand side, you've written next to the last  
 11 bullet, "Fixing it". Now you have written or  
 12 underlined, "Regional health authorities have  
 13 embarked on a National Safe Health Care Now  
 14 Campaign to implement six targeted  
 15 interventions in patient care". Examples are;  
 16 rapid response teams, prevention of adverse  
 17 drug events, and improved care for heart  
 18 attack patients. You've written to the left  
 19 hand side, "General". I take it that had  
 20 nothing to do with ER/PR?  
 21 MR. OSBORNE:  
 22 A. No, and I had discovered that later. That  
 23 note may have been written when I initially  
 24 read that briefing note for the first time.  
 25 That National Safe Health Care Now Campaign

1 MR. OSBORNE:  
 2 A. Oh, I'm sorry, I apologize.  
 3 COFFEY, Q.C.:  
 4 Q. That's fine. Right here on the -- the word is  
 5 "general" there, I take it?  
 6 MR. OSBORNE:  
 7 A. Yes, what I would have meant by that, I think,  
 8 is that it's a general message, you know, that  
 9 -- it's something that I would generally say  
 10 that health care is a priority for Government,  
 11 patient safety is first and foremost. So that  
 12 would have been something that I generally  
 13 would have said.  
 14 COFFEY, Q.C.:  
 15 Q. Okay. These are, I suppose, prompting notes  
 16 for yourself, and I appreciate that. They're  
 17 handwritten.  
 18 MR. OSBORNE:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. An aid to your memory. Under the third bullet  
 22 or to the right of the third bullet, you've  
 23 got written, "review of situation", which I  
 24 take it is this reference to the external  
 25 reviewers?

1 had absolutely nothing to do with ER/PR.  
 2 COFFEY, Q.C.:  
 3 Q. Did you ever ask any of your officials what's  
 4 it doing there?  
 5 MR. OSBORNE:  
 6 A. Well, again -- I never sent briefing notes  
 7 back.  
 8 COFFEY, Q.C.:  
 9 Q. Okay.  
 10 MR. OSBORNE:  
 11 A. If I agreed with what was there, I would say  
 12 it; if I didn't, I wouldn't.  
 13 COFFEY, Q.C.:  
 14 Q. To the left hand side of the second page of  
 15 this, you've got a "Q" written there. What  
 16 does that mean?  
 17 MR. OSBORNE:  
 18 A. That would have just been a reminder to me  
 19 that I had a question about what was there so  
 20 that when I did go to the briefing meeting,  
 21 that I would ask the question.  
 22 COFFEY, Q.C.:  
 23 Q. And you've written something else there too,  
 24 "The difference in --  
 25 MR. OSBORNE:

Page 221

1 A. "In positive or negative tests". I wanted --  
 2 so that was probably my question, but I wanted  
 3 to understand what the difference in a  
 4 positive test or a negative test was, so I  
 5 would have asked that question at that time.  
 6 COFFEY, Q.C.:  
 7 Q. Go, please, to page five of this exhibit.  
 8 MR. OSBORNE:  
 9 A. Which date are we, Mr. Coffey?  
 10 COFFEY, Q.C.:  
 11 Q. I'm sorry, May 18th, 2006. I apologize.  
 12 MR. OSBORNE:  
 13 A. No problem.  
 14 COFFEY, Q.C.:  
 15 Q. Now here you've got consultant written out to  
 16 the left hand side next to key messages, the  
 17 first key message which is the key message  
 18 dealing with the external consultant's review,  
 19 so I take it that's to prompt you that this is  
 20 about a consultant?  
 21 MR. OSBORNE:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. Or consultants. Report and recommendations is  
 25 written to the right hand side?

Page 222

1 MR. OSBORNE:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. You've written to the left hand side of the  
 5 second bullet, "new tests". What does that  
 6 mean?  
 7 MR. OSBORNE:  
 8 A. I have absolutely no idea.  
 9 COFFEY, Q.C.:  
 10 Q. No idea, fair enough, and you have an arrow or  
 11 a line running from the third bullet to the  
 12 bottom of the page where you've written  
 13 Statement of Claim against Eastern Health  
 14 before court, which I take it is the -- which  
 15 we referred to earlier, your approach would be  
 16 because the Government is not being sued,  
 17 Eastern Health is, that you would decline to  
 18 respond or comment upon?  
 19 MR. OSBORNE:  
 20 A. That's correct.  
 21 COFFEY, Q.C.:  
 22 Q. If you would go to the next page --  
 23 MR. OSBORNE:  
 24 A. Page two of this note?  
 25 COFFEY, Q.C.:

Page 223

1 Q. Yes, page two of this. The second last bullet  
 2 and this is under background, the second last  
 3 bullet reads, "CBC Radio aired a story today  
 4 about the Statement of Claim filed by Michelle  
 5 Hanlon's family, noting that Eastern had filed  
 6 a Statement of Defense. Peter Dawe, Canadian  
 7 Cancer Society, was quoted and stated that he  
 8 hopes for good information from Eastern Health  
 9 shortly. He questioned the accuracy of the  
 10 test results from laboratories across the  
 11 country and he raised the issue with his  
 12 national and provincial counterparts. He also  
 13 stressed the importance of Eastern Health  
 14 restoring public confidence in their testing  
 15 procedures", and you've underlined Peter  
 16 Dawe's name. At the bottom of the page you've  
 17 written something. Could you read that out,  
 18 please?  
 19 MR. OSBORNE:  
 20 A. I had written there that Peter Dawe has never  
 21 raised this issue with me, even though we've  
 22 met on several occasions.  
 23 COFFEY, Q.C.:  
 24 Q. Why did you write that?  
 25 MR. OSBORNE:

Page 224

1 A. I believe I would have written that in the  
 2 event I was asked the question in the House of  
 3 Assembly, and Peter Dawe's name was  
 4 referenced, you know, in terms of, you know,  
 5 did Peter Dawe raise this, or why didn't you -  
 6 - I believe that's the reason I would have  
 7 written that there.  
 8 COFFEY, Q.C.:  
 9 Q. Did you make any inquiries about what the  
 10 nature of Peter Dawe's comments was, what he  
 11 was -- what kind of information he was looking  
 12 for?  
 13 MR. OSBORNE:  
 14 A. Well, I think where he says -- and I agree  
 15 with -- Peter Dawe was a stakeholder with the  
 16 Department. In actual fact, I will say in  
 17 light of this comment here, I did have great  
 18 respect -- I do have great respect for Peter  
 19 Dawe because he was a good stakeholder, but I  
 20 think here that he questioned the accuracy of  
 21 the test results in laboratories across the  
 22 country, you know, that probably would have  
 23 just prompted me to have the same thought that  
 24 I had been given by officials that this could  
 25 be a systems error.



Page 225

1 COFFEY, Q.C.:

2 Q. Were you aware that for a period -- certainly

3 documentation, I think, is already filed as

4 exhibits before the Commission here dating

5 back until December of '05, Peter Dawe is

6 quoted in the media. In fact, there are

7 transcripts as well of him being interviewed

8 in the media. Amongst other things, he's

9 concerned about Eastern Health not saying what

10 had caused the error or errors, and

11 questioning why they were not responding to

12 that. Were you aware that that was one of the

13 concerns that he was expressing?

14 MR. OSBORNE:

15 A. No, I wasn't, no, not at that time, and --

16 COFFEY, Q.C.:

17 Q. Not at that time?

18 MR. OSBORNE:

19 A. No.

20 COFFEY, Q.C.:

21 Q. Okay. I will come back to that.

22 MR. OSBORNE:

23 A. One of the issues that he raised was restoring

24 public confidence in the testing procedures,

25 and that was a concern for me as well. I

Page 226

1 wanted to -- I think it's fair to say here

2 that I believe Eastern Health has done a good

3 job in restoring public confidence in spite of

4 the information that has not been released in

5 the lab that -- I guess what I'm saying is

6 that patients today should have confidence in

7 going to the lab at Eastern Health because I

8 believe they have put a number of very

9 positive measures in place to ensure that it

10 is one of the better labs in the country.

11 COFFEY, Q.C.:

12 Q. Okay, and you've reached that conclusion based

13 upon what?

14 MR. OSBORNE:

15 A. Based on what they've told me, based on the

16 fact that the external consultants, they've

17 reached accreditation at the lab, it's now

18 considered a centre of excellence of cancer

19 treatment. They've designated a part of the

20 lab specifically for breast cancer. You know,

21 they've got designated technicians and special

22 training provided. So I think it's fair to

23 say that I did have confidence in the measures

24 that Eastern Health were putting in place

25 along the way. I did have confidence, and I

Page 227

1 trusted Eastern Health because of the measures

2 that they were putting in place to restore

3 public confidence.

4 COFFEY, Q.C.:

5 Q. Sir, if we could, please, Exhibit P-0167.

6 This is a letter dated June 15th, 2006,

7 addressed to yourself as Minister. It's from

8 Memorial University of Newfoundland,

9 Discipline of Surgery, Faculty of Medicine.

10 It's date stamped received, I presume that is,

11 June 21, 2006. In bold print, caps, "Re;

12 pathology manpower crisis", and it's

13 underlined, and it's from a Dr. Pollett,

14 Professor and Chair of the Discipline of

15 Surgery, and it's cc'd to Dr. Nash Denic,

16 Pathology, and it's says Dr. R. Ritter, but I

17 believe that Mr. Ritter would say he's a Mr.

18 Robert Ritter, NLMA. Do you recall receiving

19 this?

20 MR. OSBORNE:

21 A. I know I would have received it because it's

22 addressed to me. I don't recall specifically

23 having received it. Having said that, you

24 know, the issue that he raised about pathology

25 manpower, I don't know if I would have

Page 228

1 considered it a crisis, but I certainly took

2 the letter or would have taken the letter

3 seriously because I too would have shared the

4 belief that there was a shortage of

5 pathologists and we were addressing that

6 issue.

7 COFFEY, Q.C.:

8 Q. Now Dr. Pollett, I take it you had not

9 solicited Dr. Pollett's views?

10 MR. OSBORNE:

11 A. No.

12 COFFEY, Q.C.:

13 Q. But Dr. Pollett had apparently taken it upon

14 himself to communicate with you, and he does

15 say, "I'm writing with respect to the current

16 shortage of pathologists in the province", and

17 the caption suggested that it's reached a

18 crisis. He says, "Pathologist are critical

19 members of the health care team, are essential

20 to the management of patients with surgical

21 diseases, especially cancer. Currently there

22 is a significant shortage, much of which

23 relates to an inability to be competitive in

24 the marketplace for these highly trained

25 physicians". Doesn't that suggest or wouldn't

Page 229

1 that suggest that marketplace, he's talking  
 2 about money?  
 3 MR. OSBORNE:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. And benefits, okay. He goes on to say, "This  
 7 is especially crucial at a time when we hope  
 8 to increase our capacity to decrease waiting  
 9 lists, particularly in such critical areas as  
 10 cancer care. I am writing to encourage you and  
 11 your officials to recognize the importance of  
 12 pathologists to the health care system and to  
 13 take necessary steps to ensure that we have a  
 14 sufficient supply of pathologists well into  
 15 the future. if you require further  
 16 information or input from my office, I will be  
 17 pleased to try and provide it". Did you ever  
 18 take him up on his offer?  
 19 MR. OSBORNE:  
 20 A. No, I did not contact Mr. Pollett or Dr.  
 21 Pollett. You know, I understood -- I  
 22 understand from this letter -- I don't recall  
 23 having received this particular letter, but I  
 24 would not have taken exception to the fact  
 25 that there is a need or there was a need in

Page 230

1 the province at that particular time to make  
 2 compensation levels for pathologists  
 3 competitive. At that particular time, we  
 4 weren't competitive with the rest of the  
 5 country. We weren't even competitive with the  
 6 rest of Atlantic Canada.  
 7 COFFEY, Q.C.:  
 8 Q. So by the middle of June of 2006, as Minister  
 9 of Health, were you aware that there had been  
 10 significant efforts going on involving your  
 11 Department, Eastern Health, and physicians  
 12 throughout the province to increase  
 13 remuneration for pathologists?  
 14 MR. OSBORNE:  
 15 A. Yes. In fact, I'd raised the issue with  
 16 Treasury Board, the Department, including  
 17 myself. I believe the process was initiated a  
 18 week or so prior to me arriving at the  
 19 Department by the Deputy, and when I had  
 20 arrived at the Department I was aware that we,  
 21 as a Department, had contacted Treasury Board,  
 22 made a submission to Treasury Board and I was  
 23 involved from that point with lobbying  
 24 Treasury Board for an increase for  
 25 pathologists.

Page 231

1 COFFEY, Q.C.:  
 2 Q. And we'll canvas that. I'm sure if I don't,  
 3 Mr. Pritchard will, but I anticipate doing so,  
 4 canvas that point with you because I'm going  
 5 to take you through the history of that. In  
 6 terms then of -- because this had started  
 7 before you arrived, which would be early in  
 8 March of '06. This is midway through June of  
 9 '06 and Dr. Pollett is weighing in on the  
 10 issue?  
 11 MR. OSBORNE:  
 12 A. Uh-hm.  
 13 THE COMMISSIONER:  
 14 Q. Mr. Coffey, it's about time for the afternoon  
 15 break, so at your convenience.  
 16 COFFEY, Q.C.:  
 17 Q. Thank you very much, Commissioner.  
 18 Commissioner, I'm going to pass on to July of  
 19 '06, so now would be great. Thank you.  
 20 THE COMMISSIONER:  
 21 Q. Take fifteen minutes.  
 22 (RECESS)  
 23 THE COMMISSIONER:  
 24 Q. Mr. Coffey.  
 25 COFFEY, Q.C.:

Page 232

1 Q. Thank you, Commissioner. If we could look,  
 2 please, at Exhibit P-0168. Now, sir, we've  
 3 been looking at briefing notes throughout the  
 4 spring, or at least March, April, and May of  
 5 2006. We've referred to John Abbott and Moira  
 6 Hennessey. I'm going to ask you now about  
 7 Tansy Mundon. Would Tansy be involved in your  
 8 briefings?  
 9 MR. OSBORNE:  
 10 A. She would be at the briefing table, yes.  
 11 COFFEY, Q.C.:  
 12 Q. I take it then she would be there all the  
 13 time, with rare exceptions?  
 14 MR. OSBORNE:  
 15 A. Generally speaking.  
 16 COFFEY, Q.C.:  
 17 Q. Now Darrell Hynes, would he be there as well?  
 18 MR. OSBORNE:  
 19 A. Yes, a similar situation, with rare  
 20 exceptions, he would be there most of the  
 21 time.  
 22 COFFEY, Q.C.:  
 23 Q. Now in respect of the ER/PR issue in the  
 24 period, March, April, and May of 2006, because  
 25 Darrell had been there -- Mr. Hynes had been

Page 233

1 there when Mr. Ottenheimer was.  
 2 MR. OSBORNE:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. Before your time. Do you recall what, if  
 6 anything, Mr. Hynes had to tell you about  
 7 ER/PR, have any insights into it?  
 8 MR. OSBORNE:  
 9 A. I don't recall.  
 10 COFFEY, Q.C.:  
 11 Q. Okay, nothing stands out.  
 12 MR. OSBORNE:  
 13 A. No.  
 14 COFFEY, Q.C.:  
 15 Q. Okay. Now looking at this exhibit at the top  
 16 of the page here, this is an e-mail from Tansy  
 17 Mundon to yourself on July 31st, 2006, at 4:41  
 18 p.m. The subject is "BN", which would be  
 19 briefing note, I take it, ER/PR, and she  
 20 writes, "Minister John asked that I forward  
 21 the following briefing note to Gary Cake in  
 22 Cabinet Secretariat. The note was prepared by  
 23 Eastern Health in response to an article in  
 24 The Independent on ER/PR". Signed, Tansy.  
 25 Below the note itself, it's said to be

Page 234

1 prepared by Heather Predham, Assistant  
 2 Director, Quality and Risk Management, dated  
 3 July 31, 2006, "Re; estrogen and progesterone  
 4 receptor testing update", and it goes on from  
 5 there. Did you -- first of all, did you  
 6 receive this e-mail or would you have received  
 7 it?  
 8 MR. OSBORNE:  
 9 A. Yes, I have.  
 10 COFFEY, Q.C.:  
 11 Q. At the time you received this, did you  
 12 understand or have any idea who Gary Cake was?  
 13 MR. OSBORNE:  
 14 A. Yes, I knew that Gary Cake was with Cabinet  
 15 Secretariat.  
 16 COFFEY, Q.C.:  
 17 Q. And that he was an Assistant Secretary, I  
 18 believe, or some title such as that?  
 19 MR. OSBORNE:  
 20 A. Yes, that's correct.  
 21 COFFEY, Q.C.:  
 22 Q. And the John in question here, "John asked  
 23 that I forward", I take it that's John Abbott?  
 24 MR. OSBORNE:  
 25 A. Yes.

Page 235

1 COFFEY, Q.C.:  
 2 Q. The idea that Tansy -- that John would be  
 3 asking Tansy to forward a briefing note to  
 4 Gary Cake in Cabinet Secretariat, a note which  
 5 addressed an article in the newspaper about  
 6 ER/PR, and the note having been prepared by  
 7 Eastern Health, in the summer of 2006 would  
 8 that have struck you as strange, or odd, or  
 9 unusual?  
 10 MR. OSBORNE:  
 11 A. It didn't stand out, no.  
 12 COFFEY, Q.C.:  
 13 Q. Do you recall if there had been any earlier  
 14 such briefing notes forwarded by your  
 15 Department to the Cabinet Secretariat?  
 16 MR. OSBORNE:  
 17 A. Not that I was aware of. With the exception  
 18 of when I had first become Minister, I was  
 19 aware that the Premier's Office had been  
 20 informed in October that there was a briefing  
 21 note that had been sent in October. That was  
 22 the only other reference.  
 23 COFFEY, Q.C.:  
 24 Q. And that would have been back in March when  
 25 you first came on board --

Page 236

1 MR. OSBORNE:  
 2 A. That's correct.  
 3 COFFEY, Q.C.:  
 4 Q. Somebody in passing said, oh, yeah, there was  
 5 one briefing note that went to the Cabinet  
 6 Secretariat in the Premier's Office back in  
 7 October when this first went --  
 8 MR. OSBORNE:  
 9 A. Yeah, that was the only reference -- the only  
 10 knowledge up to that point that I had known.  
 11 COFFEY, Q.C.:  
 12 Q. So when you received this on July 31st or  
 13 thereabouts, at that time were you using a  
 14 Blackberry or a similar sort of device, or  
 15 would you be getting your e-mails on your  
 16 computer?  
 17 MR. OSBORNE:  
 18 A. I use a Blackberry, yes.  
 19 COFFEY, Q.C.:  
 20 Q. And back in July of 2006, you did back then  
 21 too?  
 22 MR. OSBORNE:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. Are you one of those individuals who

Page 237

1 checks his e-mails regularly or I'll say, and  
 2 I don't mean to be disparaging to people who  
 3 do so, incessantly, or one of those who rarely  
 4 checks them -- presumably most people in the  
 5 room who have a Blackberry fall into one or  
 6 other category. Which category are you in?  
 7 MR. OSBORNE:  
 8 A. Perhaps somewhere in the middle.  
 9 COFFEY, Q.C.:  
 10 Q. So you wouldn't let a day go by without  
 11 checking, but you wouldn't be checking it  
 12 every five or six minutes?  
 13 MR. OSBORNE:  
 14 A. Yes, I would say that that would probably be  
 15 accurate.  
 16 COFFEY, Q.C.:  
 17 Q. Somewhere in between.  
 18 MR. OSBORNE:  
 19 A. Yeah.  
 20 COFFEY, Q.C.:  
 21 Q. So then on July 31st, you either checked it  
 22 that day or certainly on August 1, 2006, and  
 23 you would have seen this briefing note that  
 24 had already gone to Gary Cake. Up until this  
 25 point, July 31, 2006, had you had any dealings

Page 238

1 with John Abbott about the issue of whether or  
 2 not briefing notes should leave your  
 3 Department to go to Cabinet Secretariat  
 4 without you having seen them? Up to this  
 5 point -- this is July 31.  
 6 MR. OSBORNE:  
 7 A. Yes, there would have been a situation in July  
 8 where a briefing note had left that I had  
 9 become aware of --  
 10 COFFEY, Q.C.:  
 11 Q. After it left?  
 12 MR. OSBORNE:  
 13 A. After it had left, several days after it had  
 14 left, and I raised that issue with Mr. Abbott.  
 15 COFFEY, Q.C.:  
 16 Q. And that particular matter didn't involve  
 17 ER/PR at all?  
 18 MR. OSBORNE:  
 19 A. No, it didn't.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. When you say you raised it then, I take  
 22 it then this would have been before July 31st?  
 23 MR. OSBORNE:  
 24 A. I believe it was in July, yes.  
 25 COFFEY, Q.C.:

Page 239

1 Q. And when you say you raised it with him, what  
 2 does that mean?  
 3 MR. OSBORNE:  
 4 A. I spoke to him and had indicated that I felt  
 5 it was necessary that any briefing notes that  
 6 were prepared by the Department, that the  
 7 Minister receive a copy of, and I had been  
 8 asked by an individual about the briefing note  
 9 that had been prepared, was unaware of the  
 10 briefing note, and --  
 11 COFFEY, Q.C.:  
 12 Q. You were asked by a third party about this  
 13 earlier briefing note, whatever it was about?  
 14 MR. OSBORNE:  
 15 A. Yes, that the individual --  
 16 COFFEY, Q.C.:  
 17 Q. And you were caught unawares?  
 18 MR. OSBORNE:  
 19 A. That's correct.  
 20 COFFEY, Q.C.:  
 21 Q. I'm sorry, go ahead, and what happened?  
 22 MR. OSBORNE:  
 23 A. So I had spoken to Mr. Abbott and had  
 24 explained at that time that I felt it was  
 25 inappropriate for e-mails to leave the

Page 240

1 Department without a copy of that -- sorry, a  
 2 briefing note, without a copy of that briefing  
 3 note having come to me, you know, and  
 4 explained that I would like a copy of all  
 5 briefing notes that are prepared by the  
 6 Department whether they're for the Department  
 7 or central agencies.  
 8 COFFEY, Q.C.:  
 9 Q. And Cabinet Secretariat would be a central  
 10 agency?  
 11 MR. OSBORNE:  
 12 A. That's correct.  
 13 COFFEY, Q.C.:  
 14 Q. So having made your views on that known to Mr.  
 15 Abbott, I take it this perhaps is an  
 16 indication that he at least heard you because  
 17 Tansy is telling you, "John asked that I  
 18 forward the following briefing note to Gary  
 19 Cake", and she is taking it upon herself --  
 20 John Abbott either told her to send it to you  
 21 as well, or she took it upon herself to ensure  
 22 that you got it. Would she have been aware of  
 23 your views, as expressed to John Abbott?  
 24 Would Tansy have been aware of that?  
 25 MR. OSBORNE:

Page 241

1 A. Yes, I think so.  
 2 COFFEY, Q.C.:  
 3 Q. So it might not have been John Abbott at all  
 4 asking it go to you, it may have been Tansy  
 5 saying, oh, yes, Mr. Osborne wants these sent  
 6 to him?  
 7 MR. OSBORNE:  
 8 A. If I could go back to the previous question.  
 9 COFFEY, Q.C.:  
 10 Q. Sure.  
 11 MR. OSBORNE:  
 12 A. I thought about that. I'm thinking that she  
 13 would have known that I had raised it with  
 14 John. In fairness, I can't be absolutely  
 15 certain.  
 16 COFFEY, Q.C.:  
 17 Q. Now when you got this one, this is prepared by  
 18 Heather Predham, did you know who Heather  
 19 Predham was at that point?  
 20 MR. OSBORNE:  
 21 A. The name was familiar to me as an employee of  
 22 Eastern Health.  
 23 COFFEY, Q.C.:  
 24 Q. When you received this, the subject matter is  
 25 "Re: estrogen and progesterone receptor

Page 242

1 testing update. The total number of patients  
 2 sent for retesting was 939. The majority of  
 3 results have been returned, reviewed, and the  
 4 individual patients informed. Exceptions to  
 5 this are listed below", and there's quite an  
 6 amount of text below, and I'll get to that in  
 7 a moment, but in terms of numbers up to this  
 8 point in time, July 31, 2006, had you been  
 9 provided with any total numbers?  
 10 MR. OSBORNE:  
 11 A. No, not at that point.  
 12 COFFEY, Q.C.:  
 13 Q. So this was the first indication to you, the  
 14 total number of patients sent for retesting  
 15 was 939?  
 16 MR. OSBORNE:  
 17 A. Oh, I'm sorry, Mr. Coffey. Yes, I was aware  
 18 of the 939. I'm sorry, I misunderstood what  
 19 you were asking.  
 20 COFFEY, Q.C.:  
 21 Q. That's fair enough. You were before that  
 22 aware of the total number?  
 23 MR. OSBORNE:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

Page 243

1 Q. So the fact that it mentioned 939 wouldn't  
 2 have been any surprise?  
 3 MR. OSBORNE:  
 4 A. No, it would not.  
 5 COFFEY, Q.C.:  
 6 Q. Had you been aware of the article in The  
 7 Independent?  
 8 MR. OSBORNE:  
 9 A. I can't recall, to be honest with you.  
 10 COFFEY, Q.C.:  
 11 Q. But in any case, you certainly were aware of  
 12 it when you got the e-mail?  
 13 MR. OSBORNE:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. Aware of it in the sense that there was a  
 17 reference to it. Did you make any inquiries  
 18 about why Gary Cake wanted a briefing note?  
 19 MR. OSBORNE:  
 20 A. It wouldn't have been unusual, I think, for a  
 21 central agency to request a briefing note from  
 22 time to time on an issue if they perceived  
 23 that it was an issue that they should be aware  
 24 of.  
 25 COFFEY, Q.C.:

Page 244

1 Q. And at that time, did you make any inquiries  
 2 about why are you looking for it, why are they  
 3 looking for it, what's this about?  
 4 MR. OSBORNE:  
 5 A. No, it wouldn't have stood out to me that, you  
 6 know, it was strange that they would have  
 7 requested a briefing note.  
 8 COFFEY, Q.C.:  
 9 Q. Your understanding of what it was they were  
 10 looking for, they were looking for an update?  
 11 MR. OSBORNE:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. And the update would be in terms of the total  
 15 number of retests and what the results were?  
 16 MR. OSBORNE:  
 17 A. Well, my understanding would have been based  
 18 on this. I don't think the e-mail exchange  
 19 referenced the numbers of people affected.  
 20 They were simply looking for an update.  
 21 COFFEY, Q.C.:  
 22 Q. An update, yes. It does say, "The majority of  
 23 results have been returned, reviewed, and the  
 24 individual patients informed".  
 25 MR. OSBORNE:

Page 245

1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. And certain exceptions. Now the exceptions  
 4 are listed under the headings; "ductal  
 5 carcinoma in situ, DCIS for short". Below  
 6 that in quotes, "Retro" converters, it's right  
 7 down there at the bottom of the page. Turn  
 8 the page on to the next is a heading,  
 9 "Deceased", and then there's a heading, "Legal  
 10 activity - Hanlon claim and Doucette claim".  
 11 Now, sir, just go back to the first page of  
 12 this. Now up to this point, the end of July,  
 13 2006, had you been aware of what DCIS was?  
 14 MR. OSBORNE:  
 15 A. That was the first introduction of information  
 16 on that topic to me.  
 17 COFFEY, Q.C.:  
 18 Q. And at the time, did you understand it, having  
 19 read this?  
 20 MR. OSBORNE:  
 21 A. Well, only what I had read within the briefing  
 22 note. I did recognize it as part of the ER/PR  
 23 update.  
 24 COFFEY, Q.C.:  
 25 Q. Now under DCIS -- first of all, under that

Page 246

1 heading it describes what DCIS is and the type  
 2 of diagnosis it is, and Ms. Predham says in  
 3 the second paragraph, "Of the results returned  
 4 from Mount Sinai, there were ones that Mount  
 5 Sinai did not retest as they diagnosed them as  
 6 being DCIS".  
 7 MR. OSBORNE:  
 8 A. That's correct.  
 9 COFFEY, Q.C.:  
 10 Q. "Initially the panel reviewed the initial  
 11 pathology report and if that report diagnosed  
 12 the person as having DCIS, then there was no  
 13 further action required. The patient is  
 14 confirmed DCIS and does not have to be  
 15 retested for ER/PR". Now did anyone around  
 16 this time in the summer of '06 make you aware  
 17 that a number of patients had originally been  
 18 tested for ER/PR or DCIS?  
 19 MR. OSBORNE:  
 20 A. No, this would have been the first indication  
 21 to me.  
 22 COFFEY, Q.C.:  
 23 Q. The second last paragraph under this heading  
 24 is, "However, our review has also revealed  
 25 patients who were incorrectly diagnosed in

Page 247

1 their original pathology report with an  
 2 invasive disease. This may have led them to  
 3 being treated with Tamoxifen or chemotherapy.  
 4 At this time, there are three women who fall  
 5 into this category. Representatives of  
 6 Eastern Health and the Clinical Chiefs of  
 7 Pathology in cancer care have disclosed this  
 8 information to those affected". Now what was  
 9 your understanding at the time as to what that  
 10 paragraph meant?  
 11 MR. OSBORNE:  
 12 A. At that time, I would have understood that  
 13 these there patients originally would have  
 14 been tested negative, had gone to Mount Sinai,  
 15 and Mount Sinai would have discovered that, in  
 16 fact, there was an error and that they were  
 17 actually DCIS. Whether rightly or wrongly,  
 18 that was the interpretation that I put on  
 19 that.  
 20 COFFEY, Q.C.:  
 21 Q. It does say that "Our review", that is Eastern  
 22 Health, "has also revealed patients who were  
 23 incorrectly diagnosed in their original  
 24 pathology report with an invasive disease",  
 25 suggesting that, in fact, now the considered

Page 248

1 view was they did not have invasive disease.  
 2 Is that your understanding?  
 3 MR. OSBORNE:  
 4 A. Yes. Now whether or not that would have --  
 5 again trying to recall what I remembered or  
 6 what I knew of it back then, it would  
 7 certainly be my understanding today.  
 8 COFFEY, Q.C.:  
 9 Q. Yes, at the time did you understand the  
 10 significance of that for those three patients,  
 11 reading that at the time?  
 12 MR. OSBORNE:  
 13 A. No, at the time I would have viewed this, you  
 14 know, certainly not to diminish by saying I  
 15 didn't understand the significance for these  
 16 patients, because obviously, you know, this  
 17 was very significant to the individual  
 18 patients. But at the time I didn't understand  
 19 the significance of what this meant.  
 20 COFFEY, Q.C.:  
 21 Q. In a practical sense?  
 22 MR. OSBORNE:  
 23 A. In a practical sense. I believed what it had  
 24 meant was that it was part of the ER/PR  
 25 review. I'm not certain today whether I'm

Page 249

1 correct in that understanding or not, but I  
 2 would have believed, I think, at that time  
 3 that these patients were originally tested  
 4 negative and then discovered that they were  
 5 actually DCIS.  
 6 COFFEY, Q.C.:  
 7 Q. And that meant what, that they did not have -  
 8 MR. OSBORNE:  
 9 A. No, that meant in my understanding of it at  
 10 the time--and again, you know, not being an  
 11 oncologist or pathologist, I'm probably  
 12 treading into an area here where I shouldn't  
 13 be trying to explain what this means.  
 14 COFFEY, Q.C.:  
 15 Q. And I appreciate you may not be accurate at  
 16 all in your understanding of it.  
 17 MR. OSBORNE:  
 18 A. No.  
 19 COFFEY, Q.C.:  
 20 Q. But I'm just asking you what your  
 21 understanding was, whether you're right or  
 22 wrong.  
 23 MR. OSBORNE:  
 24 A. Yes. Well, my understanding was that these  
 25 three individuals would have received

Page 250

1 treatment that they did not require and that  
 2 as part of the ER/PR review that they were  
 3 incorrectly diagnosed and had either received  
 4 Tamoxifen or chemotherapy.  
 5 COFFEY, Q.C.:  
 6 Q. I take it unnecessarily?  
 7 MR. OSBORNE:  
 8 A. Unnecessarily.  
 9 COFFEY, Q.C.:  
 10 Q. That was what you understood at the time?  
 11 MR. OSBORNE:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. Was this the first time via this e-mail that  
 15 you were learning this? There's no reference,  
 16 I don't believe, in the briefing notes.  
 17 MR. OSBORNE:  
 18 A. There's no reference to DCIS. Excuse me.  
 19 There was no reference given to me by anybody,  
 20 either within the Department or Eastern  
 21 Health, of DCIS. At the time I understood  
 22 this to be part of the review and, you know, I  
 23 understood that as part of the review there  
 24 were, unfortunately, patients that were under  
 25 treated, and unfortunately, patients that

Page 251

1 would have been over treated.  
 2 COFFEY, Q.C.:  
 3 Q. And these three would be the category, you  
 4 were given to understand, were over treated?  
 5 MR. OSBORNE:  
 6 A. That's correct.  
 7 COFFEY, Q.C.:  
 8 Q. But this is the first time you're hearing  
 9 about this?  
 10 MR. OSBORNE:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. This e-mail?  
 14 MR. OSBORNE:  
 15 A. Well, the first time that I--yeah, that this  
 16 has been brought to my attention.  
 17 COFFEY, Q.C.:  
 18 Q. Exactly.  
 19 MR. OSBORNE:  
 20 A. I would have understood that there were people  
 21 both under treated and over treated.  
 22 COFFEY, Q.C.:  
 23 Q. When did you first get that understanding?  
 24 MR. OSBORNE:  
 25 A. I can't recall. I wouldn't have been

Page 252

1 surprised by this e-mail as part of the  
 2 result. I should pre-qualify of qualify that  
 3 maybe by saying I would not have been  
 4 surprised by this e-mail to see that there  
 5 were patients both over treated and under  
 6 treated as a result of the errors.  
 7 COFFEY, Q.C.:  
 8 Q. Do you recall, then--I stand to be corrected,  
 9 I don't believe it's anywhere referenced in  
 10 the briefing notes, the idea of over treating  
 11 or under treating nor DCIS, I stand to be  
 12 corrected, but I don't believe so, in the  
 13 briefing notes we've looked at.  
 14 MR. OSBORNE:  
 15 A. No.  
 16 COFFEY, Q.C.:  
 17 Q. And I don't believe there's any reference in  
 18 your handwritten notes to that either.  
 19 MR. OSBORNE:  
 20 A. No, there's not. And again, I may have  
 21 misunderstood what I read. I don't recall  
 22 anybody up to this point having explained to  
 23 me, certainly nobody had explained DCIS.  
 24 COFFEY, Q.C.:  
 25 Q. Okay.

Page 253

1 MR. OSBORNE:  
 2 A. I don't recall anybody having told me patients  
 3 would have been over treated or under treated.  
 4 I think that would have been just my  
 5 understanding from reading this and it  
 6 wouldn't have surprised me if there were  
 7 errors that there would be people both over  
 8 treated and people under treated.  
 9 COFFEY, Q.C.:  
 10 Q. Now, Ms. Predham at that point goes on to say  
 11 "There are 14 more DCIS patients throughout  
 12 Newfoundland and Labrador that require further  
 13 review by pathology." So at that time your  
 14 understanding was in respect of those 14  
 15 patients that was still under review?  
 16 MR. OSBORNE:  
 17 A. I'm sorry, Mr. Coffey, where was that?  
 18 COFFEY, Q.C.:  
 19 Q. It's the following sentence, it's right here.  
 20 It's the one right before Retro Converters.  
 21 MR. OSBORNE:  
 22 A. Okay, sorry.  
 23 COFFEY, Q.C.:  
 24 Q. So the paragraph above refers to three  
 25 patients.

Page 254

1 MR. OSBORNE:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. Yes, there are three women who fall into this  
 5 category at this time. And then there are 14  
 6 more that they are still looking at.  
 7 MR. OSBORNE:  
 8 A. Yes. I don't recall that standing out to me  
 9 for, you know, at that time, other than to,  
 10 you know, to believe that it was part of the  
 11 review, perhaps.  
 12 COFFEY, Q.C.:  
 13 Q. Now, under "Retro Converters" Ms. Predham has  
 14 written, "All patients who are negative for ER  
 15 were included in the retesting process. As  
 16 the clinical definition of negative changed  
 17 over the years all patients with an ER of 30  
 18 percent or less were retested. That means  
 19 that in the group retested there were women  
 20 who, although their ER level met this  
 21 definition of negative were considered  
 22 positive at the time and received hormonal  
 23 treatment. However, in four cases retesting  
 24 by Mount Sinai identified that women in this  
 25 category now have an ER/PR status of zero

Page 255

1 percent which has been confirmed by subsequent  
 2 retesting at Mount Sinai. Representative of  
 3 Eastern Health and the Clinical Chiefs of  
 4 Pathology and Cancer Care will meet with them  
 5 in the near future to disclose this  
 6 information." Now, what did you understand at  
 7 that time Retro Converters were about?  
 8 MR. OSBORNE:  
 9 A. That had been explained to me.  
 10 COFFEY, Q.C.:  
 11 Q. Do you recall when?  
 12 MR. OSBORNE:  
 13 A. No, I don't, and I don't recall by who,  
 14 either. But I do remember, because I did ask  
 15 a number of questions about this along the way  
 16 and that had been explained to me. I'm  
 17 believing it's perhaps by John Abbott.  
 18 COFFEY, Q.C.:  
 19 Q. Yes.  
 20 MR. OSBORNE:  
 21 A. That because of the clinical definition  
 22 changing of negatives and positives, that the  
 23 threshold, as I understand it, had changed and  
 24 had people that would previously have been  
 25 considered as negative would now be considered

Page 256

1 positive because of the changing threshold.  
 2 COFFEY, Q.C.:  
 3 Q. Yes. And how did that relate to Retro  
 4 Converters? Ms. Predham, in the second  
 5 paragraph, identifies four such cases.  
 6 MR. OSBORNE:  
 7 A. I'm not certain.  
 8 COFFEY, Q.C.:  
 9 Q. And I take it that you're not certain to this  
 10 day as to what exactly Retro Converters  
 11 involved?  
 12 MR. OSBORNE:  
 13 A. No. Again, I'm--yeah, I would have relied,  
 14 really, on the advice being given to me by  
 15 Eastern Health and by the Department. In  
 16 fact, I'm really rather nervous talking about  
 17 what this means today because I'm not an  
 18 oncologist or a pathologist and you know, as a  
 19 result what I'm saying here may or -  
 20 COFFEY, Q.C.:  
 21 Q. Again, I'm just asking -  
 22 MR. OSBORNE:  
 23 A. - may not in fact be clinically correct.  
 24 COFFEY, Q.C.:  
 25 Q. And I appreciate that. That's why I'm just



Page 257

1 asking--I appreciate the caveats that you're  
 2 giving us, but I'm just asking what your  
 3 understanding was at the time and even now.  
 4 If, you know, whether you're correct or  
 5 incorrect clinically, I'm sure there are  
 6 batteries or legions of doctors who could  
 7 speak to that.

8 MR. OSBORNE:  
 9 A. Yes.

10 COFFEY, Q.C.:  
 11 Q. It's your understanding as the Minister at the  
 12 time that I'm interested in.

13 MR. OSBORNE:  
 14 A. Yeah. I'm not certain. I mean, you know, to  
 15 put it in the context of what I understood, I  
 16 was asking lots of questions because I wanted  
 17 to have some understanding of the issue. My  
 18 primary concern was to ensure that individuals  
 19 who needed treatment received that. But I  
 20 also understood that because the professionals  
 21 with the professional and academic background  
 22 to deal with these issues were at Eastern  
 23 Health that this issue was managed by Eastern  
 24 Health.

25 COFFEY, Q.C.:

Page 258

1 Q. Okay.

2 MR. OSBORNE:  
 3 A. So I did view this as an update and you know,  
 4 I was aware that the--a further update would  
 5 be provided once they had calculated, you  
 6 know, the numbers of individuals who were  
 7 affected by the retesting.

8 COFFEY, Q.C.:  
 9 Q. Okay. It does end on that page, that first  
 10 page of the Exhibit does say, certainly, that  
 11 representatives of Eastern Health and the  
 12 Clinical Chiefs "will meet with them,"  
 13 presumably the four Retro Converters, "in the  
 14 near future to disclose this information." So  
 15 you were told that they were attending to it?

16 MR. OSBORNE:  
 17 A. Yes. And, you know, the personal notes that  
 18 I'd made on this when I had received it were,  
 19 you know, that the majority of patients had  
 20 been informed, patients informed and patients  
 21 to be informed.

22 COFFEY, Q.C.:  
 23 Q. Sure.

24 MR. OSBORNE:  
 25 A. So, I mean, that would have been one of my

Page 259

1 concerns there. And I think that is--while  
 2 this was an update provided to me, that is the  
 3 thing that I focused on was to ensure that  
 4 anybody who needed to be informed of a change  
 5 in treatment or of a change in status were  
 6 actually informed.

7 COFFEY, Q.C.:  
 8 Q. Now, if we go to page 2, please, of the  
 9 Exhibit? Too far. There. The headings there  
 10 are, well, the bottom heading is "Legal  
 11 Activity" and then the Hanlon claim and  
 12 Doucette claim are referred to. From your  
 13 perspective, and I take it is that briefing  
 14 note we look back--looked at back in May of  
 15 2006 had indicated, look, Eastern Health is  
 16 being sued, not the government, it's before  
 17 the courts, I, the Minister, am not commenting  
 18 upon it. Well then, of course, the question  
 19 arises then, well, what difference does it  
 20 make to your Department or to the Cabinet  
 21 Secretariat, in particular, to know about the  
 22 Hanlon claim and Doucette claims?

23 MR. OSBORNE:  
 24 A. Any time this was included in a briefing note,  
 25 what I would take from the fact that this was

Page 260

1 included was at this particular stage there  
 2 were, with the legal activity there were two  
 3 individuals. I was gauging that as, if you  
 4 would, as a level of--you know, or to help  
 5 gage what was actually happening at Eastern  
 6 Health. I wasn't personally following the  
 7 legal activity itself, but to know that there  
 8 were two individuals who had applied for claim  
 9 up to that particular point against Eastern  
 10 Health would have given some insight as to the  
 11 level and--I recall asking, again, because of  
 12 the lack of calendar or my inability to  
 13 pinpoint the dates, I can't tell you when, but  
 14 I do recall asking Eastern Health and they  
 15 told me that it was a very small number of  
 16 people that would actually be involved--or  
 17 would actually have a significant claim  
 18 against Eastern Health, I think was the way it  
 19 was phrased. You know, so this would have  
 20 told me that there were two. And the only  
 21 reason I was interested in that is I felt that  
 22 anybody who were going to hire a lawyer and  
 23 make a claim, that would give some insight as  
 24 to, you know, the level of error, if you want  
 25 to call it that, that people were perceiving

Page 261

1 within this at Eastern Health. I don't know  
 2 if you understand what I'm -  
 3 COFFEY, Q.C.:  
 4 Q. Sure, okay, that's--now, looking at that  
 5 particular page, the Doucette claim, the first  
 6 sentence reads, "This Statement of Claim was  
 7 recently filed with the intention to proceed  
 8 under the Class Action Legislation."  
 9 MR. OSBORNE:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. So this is the one was recently filed. The  
 13 claim above that, the Hanlon claim, was served  
 14 on Eastern Health in December of 2005. So but  
 15 the Doucette claim is the one that was  
 16 recently filed and other documentation is  
 17 going to, or does indicate that the  
 18 Independent article related to legal claims  
 19 and recently filed legal claims?  
 20 MR. OSBORNE:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. So this is the Class Action Legislation. When  
 24 you read this, did you understand--or what did  
 25 you understand that meant? It's one thing to

Page 262

1 say there's two plaintiffs, another thing  
 2 entirely to say there's one plaintiff and a  
 3 second plaintiff and the second plaintiff is  
 4 starting a class action. Did you understand  
 5 the significance, potential significance of  
 6 that?  
 7 MR. OSBORNE:  
 8 A. Well, I would have understood that as a result  
 9 of class action that the lawyer involved was  
 10 anticipating there would be another or a  
 11 number of other claimants against Eastern  
 12 Health and this would precipitate a number of  
 13 other people perhaps joining a class action.  
 14 Again, you know, I didn't follow the legal  
 15 activity real close. It was just to me, you  
 16 know, the indication of the number of people  
 17 at any given time that may have been involved,  
 18 but outside of that I really can't comment  
 19 because I didn't follow it closely.  
 20 COFFEY, Q.C.:  
 21 Q. Sure. Do you know if anybody in your  
 22 Department did?  
 23 MR. OSBORNE:  
 24 A. Not to my knowledge.  
 25 COFFEY, Q.C.:

Page 263

1 Q. Go to the top of this page. No, before I  
 2 leave that, though, so I take it then the fact  
 3 that if there was a class action and there  
 4 were a number of people that joined it or  
 5 sought to join it, that that would be some  
 6 indication to you about the level of,  
 7 perceived level of dissatisfaction among the  
 8 public with Eastern Health?  
 9 MR. OSBORNE:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. Amongst the patients, certainly?  
 13 MR. OSBORNE:  
 14 A. That's correct.  
 15 COFFEY, Q.C.:  
 16 Q. If we look at the top of that page it says,  
 17 "Deceased" is the heading. "174 patients are  
 18 identified as being deceased. In June an  
 19 ethics review was conducted regarding  
 20 notification of these families. The  
 21 recommendation was that upon conclusion of the  
 22 ER/PR review a public statement be made  
 23 stating that if the next of kin of a deceased  
 24 patient would like the results, that they  
 25 contact Eastern Health." now, up to this

Page 264

1 point, up to that point in time had you any  
 2 idea about the total number of patients who  
 3 were identified as being deceased?  
 4 MR. OSBORNE:  
 5 A. No. This was the first indication to me, so  
 6 this would have been an indication as to some  
 7 of the numbers that we're talking about here.  
 8 COFFEY, Q.C.:  
 9 Q. I don't--in fact, there's no reference here to  
 10 the total number of deceased patients whose  
 11 tissue samples might have been retested. Was  
 12 there any question raised by you at that time,  
 13 like "174 of these patients are dead. Have  
 14 you retested any of their tissue?"  
 15 MR. OSBORNE:  
 16 A. My understanding, I'd never, up until November  
 17 23rd, been given any reason to believe that  
 18 all of the samples for the patients who were  
 19 deceased would not be tested. My  
 20 understanding was that they were going to be.  
 21 COFFEY, Q.C.:  
 22 Q. Were going, okay.  
 23 MR. OSBORNE:  
 24 A. Yeah. Now, I mean, having said that, nobody  
 25 said to me they're going to test them all, but

Page 265

1 nobody had said to me that they're not. My  
 2 understanding was that all 939 samples were  
 3 going to be tested and that would have  
 4 included the patients who are deceased.  
 5 COFFEY, Q.C.:  
 6 Q. Because at this point in time, in this e-mail,  
 7 at the end of July of 2006 it doesn't say "We  
 8 have retested some deceased and not others,"  
 9 nothing like that?  
 10 MR. OSBORNE:  
 11 A. No.  
 12 COFFEY, Q.C.:  
 13 Q. So rightly or wrongly you were either told the  
 14 939 would be retested or you assumed they all  
 15 would and would include the deceased?  
 16 MR. OSBORNE:  
 17 A. Yeah. Well, I mean, I think even in my  
 18 briefing notes it indicates that all 939 are  
 19 going to be tested.  
 20 COFFEY, Q.C.:  
 21 Q. When you read this, that it was proposed that  
 22 eventually a public statement be made stating  
 23 that if the next of kin of a deceased patient  
 24 would like the results, they contact Eastern  
 25 Health, did that raise in your mind any

Page 266

1 question about, well, how would the family of  
 2 a deceased patient know whether or not the  
 3 person was retested or not, like, what their  
 4 ER/PR status was? Because they were only  
 5 retesting the ER negatives.  
 6 MR. OSBORNE:  
 7 A. Yeah. I did ask. I understood--and the issue  
 8 on the ethics here, I was fine with, because,  
 9 you know, as it was explained to me, instead  
 10 of contacting the family of a deceased patient  
 11 and causing further anxiety to that family.  
 12 But I did--you know, so the ethics piece I was  
 13 comfortable with. The understanding that I  
 14 had was when the review was completed, that  
 15 the general public at large would be informed  
 16 that if the family of a deceased member wished  
 17 to obtain the results, that they could contact  
 18 Eastern Health.  
 19 COFFEY, Q.C.:  
 20 Q. Now, were you ever advised that this ethics  
 21 review was in--produced a written report?  
 22 MR. OSBORNE:  
 23 A. No.  
 24 COFFEY, Q.C.:  
 25 Q. So without having been so advised you could

Page 267

1 hardly ask to see it?  
 2 MR. OSBORNE:  
 3 A. No, that's right.  
 4 COFFEY, Q.C.:  
 5 Q. And that e-mail from Tansy came to yourself on  
 6 the 31st of July; you would have read it and  
 7 perhaps asked some questions about it. And  
 8 then I take it that you didn't make any  
 9 further inquiries of the Cabinet Secretariat  
 10 about why you want this?  
 11 MR. OSBORNE:  
 12 A. No, I don't -  
 13 COFFEY, Q.C.:  
 14 Q. Okay. Make any--question anybody within your  
 15 Department about why they thought the Cabinet  
 16 Secretariat wanted it?  
 17 MR. OSBORNE:  
 18 A. No. I mean, I understood from the e-mail that  
 19 as a result of an article in the Independent  
 20 they wanted an update and, you know, I  
 21 accepted that at face value.  
 22 COFFEY, Q.C.:  
 23 Q. If we could look at, please, P-0169? These  
 24 are notes, at least this is the typed version  
 25 of notes of Darrell Hynes. They're redacted

Page 268

1 for matters that are not relevant to the  
 2 Commission. But they're dated August 2nd,  
 3 2006. It's a meeting with the Honourable Tom  
 4 Osborne. And one of the notes is "ER/PR  
 5 briefing for Minister. What was root cause?"  
 6 And we spoke about that earlier. So I take it  
 7 that at that point, that's early August, 2006,  
 8 you were, wanted to know what the root cause  
 9 of the ER/PR problem was?  
 10 MR. OSBORNE:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. So I take it you would have asked the people  
 14 in your executive?  
 15 MR. OSBORNE:  
 16 A. I don't ever recall getting a briefing on  
 17 this. You know, I recall the meeting and that  
 18 took place in my Minister's office. I recall  
 19 speaking with Darrell on this, but I don't  
 20 recall getting a briefing. And that's not to  
 21 say it didn't happen, but I've searched my  
 22 memory on this and I don't recall getting a  
 23 briefing on this.  
 24 COFFEY, Q.C.:  
 25 Q. Do you recall asking for one?

Page 269

1 MR. OSBORNE:  
 2 A. Well I clearly would have asked Darrell or at  
 3 least, you know, it appears there, ER/PR  
 4 briefing for Minister, what was root cause.  
 5 So, you know, it certainly appears as to why I  
 6 was asking for a briefing, but again, I may  
 7 have received it, but it's much easier for me  
 8 to remember details around the briefing notes  
 9 and other, where I kept those and kept notes  
 10 of my briefings, but I don't have a briefing  
 11 note on this and I don't recall receiving a  
 12 briefing.  
 13 COFFEY, Q.C:  
 14 Q. So by the middle of the summer of 2006, you  
 15 were certainly looking and wanted to know the  
 16 answer as to what the root cause was or  
 17 answers.  
 18 MR. OSBORNE:  
 19 A. Yes.  
 20 COFFEY, Q.C:  
 21 Q. And yet no answers were forthcoming and the  
 22 summer ended without any answers?  
 23 MR. OSBORNE:  
 24 A. Well I can't say for certain because I don't  
 25 recall. I do recall being informed that they

Page 270

1 believed it was a system's error and in  
 2 fairness to the executive and the department,  
 3 that may have been, again in response to this  
 4 question, but I don't recall whether or not I  
 5 had received a briefing on this.  
 6 COFFEY, Q.C:  
 7 Q. Well how could it be that you were not briefed  
 8 on it?  
 9 MR. OSBORNE:  
 10 A. Again, I don't recall, I may very well have.  
 11 It's just that I don't recall. I don't recall  
 12 getting a briefing note because if I had, I  
 13 think I would have had a copy of it here and I  
 14 don't recall a meeting occurring, so I don't  
 15 think one did. But, you know, I don't want it  
 16 to be found out later that, you know, I  
 17 mislead the inquiry by saying I didn't get a  
 18 briefing and I did, so I want to be very  
 19 careful by saying I don't think I did. But I  
 20 honestly don't recall it, I don't think it  
 21 happened.  
 22 COFFEY, Q.C:  
 23 Q. And if you got a briefing at all, if you did  
 24 on the root cause issue, the most that you can  
 25 recall possibly that you would have been told

Page 271

1 is it has something to do with system or  
 2 systems and DAKO?  
 3 MR. OSBORNE:  
 4 A. Yes, I mean -  
 5 COFFEY, Q.C:  
 6 Q. That's as far as it would have gone?  
 7 MR. OSBORNE:  
 8 A. Yes.  
 9 COFFEY, Q.C:  
 10 Q. If we could please see P-0046, page 4, please?  
 11 Just scroll down the page here a bit. Now  
 12 this is Dr. Banerjee's report, that same Dr.  
 13 Banerjee. Have you ever seen his October  
 14 17th, 2005 report?  
 15 MR. OSBORNE:  
 16 A. No, I haven't.  
 17 COFFEY, Q.C:  
 18 Q. And again, rightly or wrongly, this is what  
 19 Dr. Banerjee wrote back in October. I'm just  
 20 going to ask you if it would have been--I'm  
 21 going to read certain things to you and then  
 22 ask you a couple of questions about it. He  
 23 says, "Conclusions about the reasons for test  
 24 failure. One is the DAKO system faulty? This  
 25 is unlikely as there are many laboratories

Page 272

1 using the DAKO system successfully. The  
 2 reason for test failure was most likely due to  
 3 a lack of test optimization, including antigen  
 4 retrieval method and antibody detection system  
 5 titration, as positive control show weak  
 6 staining in general and internal controls  
 7 failed on all of the false negative cases."  
 8 So in essence is the DAKO system faulty? The  
 9 response is that's unlikely. Two: "Is the  
 10 Ventana system too sensitive? There is no  
 11 evidence that the Ventana system creates false  
 12 positive results; however, the system still  
 13 requires optimization to avoid non-specific  
 14 cytoplasmic staining." He then says 3) "Is  
 15 there a problem with tissue fixation? There  
 16 appears to be inadequate attention paid by the  
 17 grossing pathologist to the thickness of  
 18 tissue slices, quality and adequacy of  
 19 fixation and there is no standardized fixation  
 20 protocol that everyone adheres to." 4)  
 21 "Inadequate or no attention is being paid by  
 22 the reporting pathologist to the status of  
 23 internal controls, with inappropriate  
 24 exclusive reliance on external positive  
 25 controls." And he goes on at some length

Page 273

1 about that and the Commissioner is already  
 2 aware of the text of that paragraph. 6)  
 3 "Inappropriate choice of blocks with no  
 4 representative normal ductal epithellium."  
 5 And 7) "Better education required for  
 6 technologists, pathologists and clinicians  
 7 about the pitfalls of IHC, importance of  
 8 quality control and the interpretation of IHC  
 9 results."  
 10 Now, sir, would it, as the Minister at  
 11 the time, during the time you were Minister,  
 12 particularly in the summer of 2006 when you  
 13 were looking for root causes, would it have  
 14 been of interest to you to have been told the  
 15 contents of this report, that part of this  
 16 report?  
 17 MR. OSBORNE:  
 18 A. Yes, and, you know, I have to say some of the  
 19 language there is obviously very understood.  
 20 Some of it I think you need, you know, some  
 21 technical understanding of it, but from what I  
 22 understand of what you've read and what's  
 23 there, I mean obviously Dr. Banerjee had a  
 24 belief that, you know, as he's expressed here,  
 25 so yes, I would have to say that, you know,

Page 274

1 this would have been of interest to my office,  
 2 for sure.  
 3 COFFEY, Q.C:  
 4 Q. And in particular paragraph 7, focus on that  
 5 for a moment. He refers to "Better education  
 6 required for technologists, pathologists and  
 7 clinicians about the pitfalls of IHC, the  
 8 importance of quality control and  
 9 interpretation of IHC results." What was your  
 10 understanding about the status at that point  
 11 of ER/PR testing? Where was that being done  
 12 in Newfoundland or where was it being done for  
 13 Newfoundland patients?  
 14 MR. OSBORNE:  
 15 A. At Eastern Health.  
 16 COFFEY, Q.C:  
 17 Q. At that time were they doing it or they hadn't  
 18 -  
 19 MR. OSBORNE:  
 20 A. Oh no, I'm sorry.  
 21 COFFEY, Q.C:  
 22 Q. In the middle of '06.  
 23 MR. OSBORNE:  
 24 A. In the middle of '06?  
 25 COFFEY, Q.C:

Page 275

1 Q. Yes.  
 2 MR. OSBORNE:  
 3 A. No, I'm sorry, yes.  
 4 COFFEY, Q.C:  
 5 Q. Middle of 2006, August of 2006, Commissioner.  
 6 MR. OSBORNE:  
 7 A. I apologize, Mr. Coffey, my understanding was  
 8 that the results were still being done at  
 9 Mount Sinai.  
 10 COFFEY, Q.C:  
 11 Q. Mount Sinai. And what about--and that was for  
 12 ER testing and PR testing.  
 13 MR. OSBORNE:  
 14 A. Yes.  
 15 COFFEY, Q.C:  
 16 Q. What, if anything, did you understand about  
 17 other IHC testing? IHC being  
 18 immunohistochemical testing? Did anybody give  
 19 you any understanding of how ER and PR testing  
 20 related to a whole battery of other IHC tests?  
 21 MR. OSBORNE:  
 22 A. No, not that I can recall.  
 23 COFFEY, Q.C:  
 24 Q. Okay. See, here Dr. Banerjee has written  
 25 "technologists, pathologists and clinicians

Page 276

1 should be better educated about the pitfalls  
 2 of IHC"--stands for immunohistochemical  
 3 testing--"the importance of quality of control  
 4 and interpretation of IHC results." Now  
 5 that's not just ER/PR. IHC is much wider.  
 6 Now you, as Minister, were not ever conversant  
 7 or nobody ever told you or explained that to  
 8 you?  
 9 MR. OSBORNE:  
 10 A. No, they didn't. And again, I mean, you know  
 11 with technical issues such as that, you know,  
 12 I understand why this file would have been  
 13 under the management of Eastern Health really.  
 14 COFFEY, Q.C:  
 15 Q. Can you think of any--are you aware, from your  
 16 perspective, any rational reason why--when you  
 17 were looking for root cause or asking about  
 18 root cause in the summer of 2006, that you  
 19 would not have been told about the findings or  
 20 conclusions reached by Dr. Banerjee, that  
 21 you're aware of?  
 22 MR. OSBORNE:  
 23 A. No, I mean, that's obviously today looking  
 24 back at the fact that I had wondered what the  
 25 cause was, you know, I certainly would have

Page 277

1        been interested in knowing Dr. Banerjee's  
 2        thoughts and what he had offered in terms of  
 3        findings.  
 4 COFFEY, Q.C:  
 5        Q. And he as one of the two external consultants,  
 6        right?  
 7 MR. OSBORNE:  
 8        A. Yes.  
 9 COFFEY, Q.C:  
 10        Q. And you were aware beginning in March of 2006  
 11        that there were such two external consultants?  
 12 MR. OSBORNE:  
 13        A. Yes, I still wasn't aware that Dr. Banerjee  
 14        was the consultant.  
 15 COFFEY, Q.C:  
 16        Q. Fine, I understand that, I appreciate that you  
 17        didn't know that he was one of the two, I  
 18        appreciate that. But--and you've indicated  
 19        that, you know, with hindsight you certainly  
 20        now, looking back on it, would and should have  
 21        asked for those two reports. Can you explain  
 22        to the Commissioner, can you think of any  
 23        explanation that you can provide as to why you  
 24        didn't?  
 25 MR. OSBORNE:

Page 278

1        A. I can't give an explanation other than to say  
 2        that, you know, I thought I was being diligent  
 3        by asking all of the questions, but there is  
 4        one question that I didn't ask and that was  
 5        obviously for the reports, you know, and I  
 6        recognize today that I should have and, you  
 7        know, I'm not even going to attempt, Mr.  
 8        Coffey, to give you an excuse as to why I  
 9        didn't because I should have.  
 10 COFFEY, Q.C:  
 11        Q. And you'll find, if it's any consolation,  
 12        you'll find that you're not alone in not  
 13        having asked for the reports or to see them.  
 14        If we could go on, please, to P-0170. Now  
 15        this is an e-mail, Mr. Osborne, from Tansy  
 16        Mundon again to yourself, Moira Hennessy and  
 17        John Abbott, August 4th, 2006, at 3:37 p.m.  
 18        It's forwarding, a forward message for "The  
 19        Current". "FYI"--for your information--"the  
 20        Current is running a story on ER/PR. Please  
 21        see attached statement forwarded by Eastern  
 22        Health. This story will air nationally on  
 23        Monday." Signed Tansy. And we turn the page,  
 24        if I could, it's on Eastern Health letterhead  
 25        and it's a statement by George Tilley,

Page 279

1        President and Chief Executive Officer of  
 2        Eastern Health. And what did you understand  
 3        at the time that this was about?  
 4 MR. OSBORNE:  
 5        A. Well I understood that this was a statement by  
 6        Eastern Health to be provided to "The  
 7        Current". I took comfort in what I read here  
 8        because of the confidence that I had in  
 9        Eastern Health and the information that was  
 10        coming back to me from officials, statements  
 11        like, you know, most tests have been reviewed,  
 12        rather. In the majority of the cases, the  
 13        patient's treatment was confirmed  
 14        appropriate." I mean, that would give a level  
 15        of confidence, "we've identified a small  
 16        number of cases that require further follow  
 17        up", you know, these types of remarks would  
 18        give anybody a sense of comfort as to where  
 19        Eastern Health were with their findings.  
 20 COFFEY, Q.C:  
 21        Q. Now, you were aware certainly by this point in  
 22        time that 939--or you had understood that 939  
 23        patient's tissue samples were being retested?  
 24 MR. OSBORNE:  
 25        A. Yes.

Page 280

1 COFFEY, Q.C:  
 2        Q. So the reference to a small number of results,  
 3        discovering inconsistencies in a small number  
 4        of results -  
 5 MR. SIMMONS:  
 6        Q. They began -  
 7 COFFEY, Q.C:  
 8        Q. Which began the review--I appreciate that,  
 9        began the review, thank you, Mr. Simmons. If  
 10        I could, it says "Eastern Health originally  
 11        began a review of all ER/PR receptor tests  
 12        conducted by our laboratory since '97, when we  
 13        discovered inconsistencies in a small number  
 14        of results." But you knew or you had  
 15        understood they had retested 939 people?  
 16 MR. OSBORNE:  
 17        A. Yes.  
 18 COFFEY, Q.C:  
 19        Q. So the fact that there's a reference to a  
 20        small number of results is just the start.  
 21 THE COMMISSIONER:  
 22        Q. But it says here that there were more than 900  
 23        test samples.  
 24 COFFEY, Q.C:  
 25        Q. Yes, so the point being that the fact that

Page 281

1 it's a small number referenced in the first  
 2 paragraph, really had nothing to do with the  
 3 magnitude of the problems.  
 4 MR. SIMMONS:  
 5 Q. The small number was the number that initiated  
 6 -  
 7 COFFEY, Q.C:  
 8 Q. Yes, and I appreciate that. I'm not  
 9 suggesting at all it's inaccurate.  
 10 MR. BROWNE:  
 11 Q. In fairness this was covered with Minister  
 12 Ottenheimer yesterday in cross-examination.  
 13 COFFEY, Q.C:  
 14 Q. I don't believe I got as far as this exhibit,  
 15 Mr. Browne.  
 16 MR. BROWNE:  
 17 Q. No, but the issue of small numbers, Mr.  
 18 Coffey, in fairness, was covered with Minister  
 19 Ottenheimer yesterday in cross-examination in  
 20 terms of the retest results, when they first  
 21 started.  
 22 THE COMMISSIONER:  
 23 Q. The small number that I thought we were now  
 24 referring to was the small number in the first  
 25 paragraph, which is what caused the process to

Page 282

1 begin in the first place.  
 2 MR. BROWNE:  
 3 Q. Correct.  
 4 THE COMMISSIONER:  
 5 Q. I didn't think there was any debate about that  
 6 part.  
 7 COFFEY, Q.C:  
 8 Q. Oh no, and there's not. But Mr. Osborne had  
 9 said that that gave him comfort and I  
 10 understood -  
 11 THE COMMISSIONER:  
 12 Q. Yes, but now there's another small number  
 13 further down. I don't know whether that's--  
 14 let's clarify with the witness which small  
 15 number was giving him comfort.  
 16 MR. OSBORNE:  
 17 A. Yes, Madam Commissioner, that is--if I could  
 18 read the paragraph and certainly clear up -  
 19 THE COMMISSIONER:  
 20 Q. Yes, why don't you do that.  
 21 MR. OSBORNE:  
 22 A. "As part of the review, we have identified a  
 23 small number of cases that require further  
 24 follow-up. We are in the process of reviewing  
 25 and addressing each of these cases

Page 283

1 individually." And again, whether rightly or  
 2 wrongly, I would have identified that as  
 3 meaning that there were a small number of  
 4 individuals who would have been adversely  
 5 affected by the review.  
 6 COFFEY, Q.C:  
 7 Q. And a small number in the context meant what  
 8 to you?  
 9 MR. OSBORNE:  
 10 A. Well, you know, I -  
 11 COFFEY, Q.C:  
 12 Q. What order of magnitude are we talking about?  
 13 MR. OSBORNE:  
 14 A. I didn't calculate an order of magnitude other  
 15 than, you know, obviously Eastern Health were  
 16 saying that it was a small number of cases  
 17 that required further follow-up and that they  
 18 were in the process of reviewing and  
 19 addressing each of these cases individually.  
 20 COFFEY, Q.C:  
 21 Q. Now the idea that they required further  
 22 follow-up, what did you understand from that?  
 23 MR. OSBORNE:  
 24 A. Again, I think at the time when I read this  
 25 that it would have meant that they would have

Page 284

1 required further follow-up regarding their  
 2 treatment.  
 3 COFFEY, Q.C:  
 4 Q. Okay, so the impression you got was a small  
 5 number of patients required a change in  
 6 treatment?  
 7 MR. OSBORNE:  
 8 A. That's what I would have read into that and  
 9 again, whether rightly or wrongly, that is  
 10 what I read into that.  
 11 COFFEY, Q.C:  
 12 Q. And the order of magnitude, a small number--  
 13 maybe it's related to the small number in the  
 14 first paragraph, although I suspect, Mr.  
 15 Simmons won't be--will be addressing that, but  
 16 -  
 17 THE COMMISSIONER:  
 18 Q. Well, I think the witness has already given  
 19 his answer on what he thinks a small number  
 20 is, Mr. Coffey.  
 21 COFFEY, Q.C:  
 22 Q. Thank you, Commissioner. If I could, Mr.  
 23 Osborne, I take it then that your overall  
 24 sense of this was you took comfort from this?  
 25 MR. OSBORNE:

Page 285

1 A. Yes, I did. Well I took comfort that Eastern  
 2 Health were doing -  
 3 COFFEY, Q.C:  
 4 Q. Yes, was addressing the matter appropriately.  
 5 MR. OSBORNE:  
 6 A. That's correct.  
 7 COFFEY, Q.C:  
 8 Q. Did you have any sense or understanding at the  
 9 time as to what the focus of "The Current"s  
 10 program was?  
 11 MR. OSBORNE:  
 12 A. No, and unfortunately I didn't see the  
 13 program. I wouldn't be able to comment on  
 14 that.  
 15 COFFEY, Q.C:  
 16 Q. Did you make any inquiries?  
 17 MR. OSBORNE:  
 18 A. No, I didn't.  
 19 COFFEY, Q.C.:  
 20 Q. Look at Exhibit P-0171. Now, it is a matter--  
 21 it's filed as an exhibit. There is a briefing  
 22 note that went to the Cabinet Secretary August  
 23 18, 2006.  
 24 MR. OSBORNE:  
 25 A. Uh-hm.

Page 286

1 COFFEY, Q.C.:  
 2 Q. It originated in the Department of Health.  
 3 You're aware that that note exists? You're  
 4 certainly aware now that it exists.  
 5 MR. OSBORNE:  
 6 A. Yes, I'm aware at this time.  
 7 COFFEY, Q.C.:  
 8 Q. When did you first become aware of that note?  
 9 MR. OSBORNE:  
 10 A. Of the August 18 note?  
 11 COFFEY, Q.C.:  
 12 Q. Yes.  
 13 MR. OSBORNE:  
 14 A. In May of 2007.  
 15 COFFEY, Q.C.:  
 16 Q. Any particular day, night, do you recall?  
 17 MR. OSBORNE:  
 18 A. I recall--I don't recall the exact date. I  
 19 recall it was at a Cabinet meeting. It was  
 20 after the media had discovered the disclosure  
 21 by Eastern Health in court documents which had  
 22 revealed that there were more numbers than had  
 23 been released publicly. So, it was at that  
 24 Cabinet meeting or at a Cabinet meeting just  
 25 shortly after that.

Page 287

1 THE COMMISSIONER:  
 2 Q. I'm sorry, your voice was just a little low at  
 3 one point.  
 4 MR. OSBORNE:  
 5 A. I'm sorry.  
 6 THE COMMISSIONER:  
 7 Q. And I just wanted to make sure that I  
 8 understood correctly what you were saying.  
 9 You're saying in respect of this briefing  
 10 note, which as I understand it, was created in  
 11 August of 1006 by your department or by people  
 12 in your department?  
 13 MR. OSBORNE:  
 14 A. Yeah, I understand from the briefing note now  
 15 that it was prepared by Eastern Health and  
 16 signed off on by the Assistant Deputy Minister  
 17 of my department.  
 18 THE COMMISSIONER:  
 19 Q. So, the actual preparation was outside of your  
 20 department, but it was signed off by your  
 21 department?  
 22 MR. OSBORNE:  
 23 A. Well, that's my understanding.  
 24 THE COMMISSIONER:  
 25 Q. Or somebody in your department.

Page 288

1 MR. OSBORNE:  
 2 A. Yes, I think there were perhaps a number of  
 3 contributors to the briefing note at this  
 4 stage.  
 5 THE COMMISSIONER:  
 6 Q. And you're saying you, yourself, were note  
 7 aware of this note until the next year. Is  
 8 that what I heard you say?  
 9 MR. OSBORNE:  
 10 A. Yes, Madam Commissioner.  
 11 THE COMMISSIONER:  
 12 Q. Thank you.  
 13 COFFEY, Q.C.:  
 14 Q. And, Commissioner, it would be of some  
 15 assistance to yourself I'd suspect, Exhibit P-  
 16 0125, page 31. If we look through this, it's  
 17 entitled, "Briefing Note, Department of Health  
 18 and Community Services", the top right hand  
 19 side, there, just go up, "Copy to", it's some  
 20 kind of a stamp and it's dated 2006-08-18  
 21 copied to, we'll see, Premier, B. Crawley, R.  
 22 Reid, E. Matthews, R. Thompson, S. Barnes, B.  
 23 Taylor, J. Paddock, G. Cake, B. Parrott and J.  
 24 Cheeseman.  
 25 THE COMMISSIONER:



Page 289

1 Q. Uh-Hm.  
 2 COFFEY, Q.C.:  
 3 Q. So, this is the briefing note that I'm  
 4 referring to. And if we could turn, please,  
 5 Registrar to page 34, the bottom of that page  
 6 there's a stamp, Executive Council, August 18,  
 7 2006 Registry and it's dated August 18, 2006.  
 8 So, this is the one, I take it, Mr. Osborne,  
 9 that left your department or, at least,  
 10 involved people from your department and you  
 11 didn't see until May of 2007.  
 12 MR. OSBORNE:  
 13 A. No, is this Exhibit 171? Mine doesn't have  
 14 the Executive Council stamp.  
 15 COFFEY, Q.C.:  
 16 Q. Yeah, it's P-0125. I'll scroll back up  
 17 through for you.  
 18 MR. OSBORNE:  
 19 A. It is the August 18 note, yes.  
 20 THE COMMISSIONER:  
 21 Q. Same exhibit turns up on two different--the  
 22 same document turns up in two different  
 23 exhibits.  
 24 COFFEY, Q.C.:  
 25 Q. Okay.

Page 290

1 THE COMMISSIONER:  
 2 Q. Except for perhaps one has a stamp, the others  
 3 -  
 4 COFFEY, Q.C.:  
 5 Q. Yes, Commissioner, in fact, there's more--the  
 6 wording is different too after that.  
 7 THE COMMISSIONER:  
 8 Q. Oh, okay.  
 9 COFFEY, Q.C.:  
 10 Q. But if we could, while we're at this, this  
 11 says, "prepared by/approved by Heather  
 12 Predham, Eastern Health; Moira Hennessey,  
 13 HCS", which would be your department.  
 14 MR. OSBORNE:  
 15 A. That's correct.  
 16 COFFEY, Q.C.:  
 17 Q. And reviewed by Marilyn McCormack and Gary  
 18 Cake, Cabinet Secretariat. So, I take it that  
 19 they're prepared by, at least, the  
 20 preparation, at least according to what's  
 21 typed here was partly by Ms. Predham from  
 22 Eastern Health and partly by Moira Hennessey  
 23 from your department, the preparation?  
 24 MR. OSBORNE:  
 25 A. Yes, it would appear so, yes.

Page 291

1 COFFEY, Q.C.:  
 2 Q. Yes. If we could go up--if we could return  
 3 turn--and this one you did not see until May  
 4 of '07.  
 5 MR. OSBORNE:  
 6 A. That is correct.  
 7 COFFEY, Q.C.:  
 8 Q. In terms of the history of this document, if  
 9 we could look at P-0171 and Commissioner, I  
 10 can advise you, I won't be doing it with this  
 11 witness, but the preparation of this document  
 12 will receive some attention down the road,  
 13 before you. But here, this e-mail is from  
 14 Moira Hennessey to John Abbott, Thursday,  
 15 August 17, 2006 at 12:41 p.m.. The subject is  
 16 "forwarding DM briefing note, ER/PR testing".  
 17 She writes, "John, FYI in review, this note  
 18 will likely go to the PO later today or  
 19 tomorrow. Signed, Moira". And I take it "PO"  
 20 in that context you would think would be the  
 21 "Premier's Office"?  
 22 MR. OSBORNE:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. And if you look at the next page of that

Page 292

1 exhibit, P-0171, page 2. Now, this, I take  
 2 it--you just look down through it, if you'd  
 3 like, on the screen.  
 4 MR. OSBORNE:  
 5 A. Okay.  
 6 COFFEY, Q.C.:  
 7 Q. Is the August 18 or at least a version of the  
 8 August 18 briefing note.  
 9 MR. OSBORNE:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. So, on August 17, 2006 this appears to  
 13 indicate that Ms. Hennessey was forwarding a  
 14 draft of this to Mr. Abbott, your DM, for his  
 15 review.  
 16 MR. OSBORNE:  
 17 A. Page one?  
 18 COFFEY, Q.C.:  
 19 Q. Yes, Exhibit P-0171, page 1.  
 20 MR. OSBORNE:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. If you would turn, please, to Exhibit P-0172,  
 24 page 1 and this is an e-mail from Marilyn  
 25 McCormack to Moira Hennessey dated August 18,

Page 293

1 2006 at 10:59 a.m., subject, "Briefing note  
 2 for Premier on ER/PR receptor tests". She  
 3 begins, "Hi Moira, attached is the final"--  
 4 final is in caps and bold--"copy of the above  
 5 noted briefing note, if you approve of same.  
 6 I had to go back to Heather to ask how many  
 7 women were most impacted by the change in  
 8 status of the ER/PR receptor testing. She  
 9 gave me the number of 22 as indicated on the  
 10 third page of the briefing note". And she  
 11 goes on to talk about Gary also wanted to know  
 12 how many were likely to initiate legal action  
 13 and so on. And she concludes with, "If you  
 14 were okay with this note, Gary has approved it  
 15 and it will go as is. Please advise as soon  
 16 as possible. Marilyn".  
 17 Now sir, I appreciate that it wasn't  
 18 until May of 2007 that you first learned of  
 19 the existence of this briefing note. In fact,  
 20 it was during a Cabinet meeting, wasn't it?  
 21 MR. OSBORNE:  
 22 A. Yes, that's correct.  
 23 COFFEY, Q.C.:  
 24 Q. You were no longer Minister of Health.  
 25 MR. OSBORNE:

Page 294

1 A. I believe I was Minister of Justice.  
 2 COFFEY, Q.C.:  
 3 Q. Minister of Justice at the time. Did you--  
 4 have you ever made any inquiries of Ms.  
 5 Hennessey or Mr. Abbott as to how it could be  
 6 that despite your direction that no briefing  
 7 note leave your department without you seeing  
 8 it, that this one apparently escaped?  
 9 MR. OSBORNE:  
 10 A. No, not on this--I can say that in the last  
 11 week of October, there was a second briefing  
 12 note that I had become aware of that had left  
 13 the department and -  
 14 COFFEY, Q.C.:  
 15 Q. That was October of '06.  
 16 MR. OSBORNE:  
 17 A. October of '06, yes.  
 18 COFFEY, Q.C.:  
 19 Q. Yes, go ahead.  
 20 MR. OSBORNE:  
 21 A. And as a result of finding out for the second  
 22 time that a briefing note had gone to a  
 23 central agency without having come to me, I  
 24 had gone to John Abbott, I had gotten very  
 25 upset which is generally not my nature, but I

Page 295

1 did get very upset with him. And I said that  
 2 this is never to happen again and I had  
 3 instructed Darrell Hynes, at the next  
 4 executive meeting, to ensure that there was a  
 5 new protocol adopted by the department that  
 6 all briefing notes that leave the department  
 7 for a central agency have to signed off on by  
 8 me prior to leaving. And that happened in an  
 9 executive meeting, I believe, the first week  
 10 of November.  
 11 COFFEY, Q.C.:  
 12 Q. So, now, just so the Commissioner is clear,  
 13 you say this was the second such briefing  
 14 note, but you weren't aware of this one.  
 15 MR. OSBORNE:  
 16 A. No, -  
 17 COFFEY, Q.C.:  
 18 Q. So, there was the other one in July, probably  
 19 -  
 20 MR. OSBORNE:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. - and you referred to that earlier. And there  
 24 was a second one in October you did become  
 25 aware of and then you addressed the matter

Page 296

1 forcefully with Mr. Abbott.  
 2 MR. OSBORNE:  
 3 A. That's correct.  
 4 COFFEY, Q.C.:  
 5 Q. And procedural changes occurred. But in terms  
 6 of this one, when you became aware in May of  
 7 2007 that the August 18 briefing note--you're  
 8 sitting around the Cabinet table and you  
 9 become aware of it--at that time or since  
 10 then, have you ever inquired of Mr. Abbott or  
 11 Ms. Hennessey how that happened?  
 12 MR. OSBORNE:  
 13 A. No, I have not. I was very upset. I think it  
 14 was only a matter of a few days after that  
 15 meeting that the Inquiry had been called and  
 16 prior to that, I was really quite upset and  
 17 had gone through a number of thoughts in my  
 18 own mind as to why, you know, and--but to  
 19 answer your question, no, I did not contact  
 20 either of them.  
 21 THE COMMISSIONER:  
 22 Q. Do I understand then that there were--in fact,  
 23 you are now aware of three briefing notes that  
 24 got out of your department without your  
 25 knowing.

Page 297

1 MR. OSBORNE:  
 2 A. Yes.  
 3 THE COMMISSIONER:  
 4 Q. The first one in July; one in August which you  
 5 found about a year later; and then one in  
 6 October. And do I take it that after the  
 7 October one was when you had your, sort of,  
 8 strongly stated position to your Deputy  
 9 Minister and to Mr. Hynes about this never  
 10 happening again and making sure there is a  
 11 protocol?  
 12 MR. OSBORNE:  
 13 A. Yes, Madam Commissioner, that's correct.  
 14 THE COMMISSIONER:  
 15 Q. Okay.  
 16 COFFEY, Q.C.:  
 17 Q. If we could just look, please, at Exhibit P-  
 18 0125, page 34. Now, sir, this is the one that  
 19 apparently got filed in the Executive Council  
 20 Registry or at least a copy of it. On the  
 21 last--and this is the fourth page of the  
 22 actual document itself. There's a reference  
 23 to, in the middle of the page, title, "Reasons  
 24 for the erroneous results and steps taken to  
 25 prevent reoccurrence". And it says, "Eastern

Page 298

1 Health has engaged external consultants to  
 2 review the procedures at the laboratory. When  
 3 all reports are received, they will be  
 4 reviewed and the recommendations will be  
 5 implemented. The goal is to have the  
 6 laboratory accredited. Until these processes  
 7 are completed, all samples will continue to be  
 8 re-tested at Mt. Sinai". See that?  
 9 MR. OSBORNE:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. Now, in the middle of August 2006, what was  
 13 your understanding about the status of the  
 14 external consultants reviews?  
 15 MR. OSBORNE:  
 16 A. They had been received by the department and,  
 17 in fact, I'd been told and it's on briefing  
 18 notes that all recommendations had been  
 19 implemented.  
 20 COFFEY, Q.C.:  
 21 Q. But that's not what the second sentence of  
 22 that says, is it?  
 23 MR. OSBORNE:  
 24 A. No, it's not.  
 25 COFFEY, Q.C.:

Page 299

1 Q. In fact, the second sentence says, "when all  
 2 reports are received, they will be reviewed  
 3 and the recommendations will be implemented".  
 4 MR. OSBORNE:  
 5 A. That is correct.  
 6 COFFEY, Q.C.:  
 7 Q. Now, if you had received that on August 18,  
 8 2006 and read it, that would have then  
 9 contradicted your understanding at the time.  
 10 MR. OSBORNE:  
 11 A. It would have, yes.  
 12 COFFEY, Q.C.:  
 13 Q. Would you, do you think, have caused you to  
 14 make any inquiries?  
 15 MR. OSBORNE:  
 16 A. I believe it would have, yes.  
 17 COFFEY, Q.C.:  
 18 Q. And inquiries, presumably, would have been of  
 19 the drafters of the note or whoever created  
 20 the note, had a hand in it.  
 21 MR. OSBORNE:  
 22 A. That's correct.  
 23 COFFEY, Q.C.:  
 24 Q. Because you understood as of that time that  
 25 all the external consultants reports had

Page 300

1 already been received.  
 2 MR. OSBORNE:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. And presumably if they had been received, they  
 6 would have been reviewed and that all the  
 7 recommendations had been implemented.  
 8 MR. OSBORNE:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Commissioner, if we could -  
 12 THE COMMISSIONER:  
 13 Q. Are you saying this is a convenient place to  
 14 break?  
 15 COFFEY, Q.C.:  
 16 Q. It is because I'm going to go on to the fall  
 17 then.  
 18 THE COMMISSIONER:  
 19 Q. All right. We'll reconvene at 9:30 tomorrow  
 20 morning.  
 21 MR. OSBORNE:  
 22 A. Yes, Madam Commissioner.  
 23 THE COMMISSIONER:  
 24 Q. Thank you.  
 25 Upon conclusion at 4:46 p.m.

CERTIFICATE

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

Inquiry on Hormone Receptor Testing

<p>-?- <b>'05</b> [4] 43:11 188:5 196:6 225:5 <b>'06</b> [18] 43:11 60:1 123:16 138:8 154:18 199:21 205:18 206:24 209:13 217:25 231:8,9,19 246:16 274:22,24 294:15,17 <b>'07</b> [2] 60:2 291:4 <b>'97</b> [1] 280:12</p>	<p>286:10 289:6,7,19 292:7 292:8,25 296:7 299:7 <b>18th</b> [20] 79:21 136:1,2 150:19 153:18,20 154:14 156:1 159:7,21 163:25 166:23 170:1 171:14 174:6 177:20 183:10 185:17 189:25 221:11 <b>19</b> [4] 211:2,3,5 215:1 <b>191</b> [1] 3:3 <b>1996</b> [1] 78:22 <b>1997</b> [1] 79:17 <b>1999</b> [1] 78:24 <b>19th</b> [11] 11:3 25:5,20 26:1,14,16,24 48:19 64:14 79:21 201:1 <b>1st</b> [5] 20:14 160:20 166:6 171:4 180:5</p>	<p><b>22</b> [1] 293:9 <b>22nd</b> [2] 58:11 187:2 <b>23rd</b> [5] 111:14 203:17 204:2 205:13 264:17 <b>25</b> [3] 42:21,23 46:2 <b>25th</b> [1] 24:12 <b>26th</b> [1] 62:9 <b>27</b> [8] 140:17 143:9 146:21 152:21 153:3,9 153:15 154:2 <b>27th</b> [10] 135:24 140:11 141:21 142:10,12,18 146:6 147:16 148:25 153:2 <b>29</b> [1] 211:7 <b>2:00</b> [1] 166:19 <b>2nd</b> [18] 135:25 141:24 142:16,24 148:21 149:7 190:24 191:1 193:2 195:18 201:10,14 202:11 205:22 206:23 210:15,25 268:2</p>	<p>145:13 <hr/><b>-7-</b> <b>7</b> [3] 66:21 273:5 274:4 <b>70</b> [1] 163:18 <b>73</b> [4] 152:18 153:3,9,15 <b>77</b> [2] 2:5,7 <b>7th</b> [1] 187:12 <hr/><b>-8-</b> <b>8</b> [2] 1:5 132:10 <b>8.1</b> [2] 213:10,16 <b>8th</b> [2] 301:5,12 <hr/><b>-9-</b> <b>9</b> [2] 152:13 187:11 <b>900</b> [1] 280:22 <b>939</b> [10] 242:2,15,18 243:1 265:2,14,18 279:22 279:22 280:15 <b>9:30</b> [1] 300:19 <b>9th</b> [7] 111:19,21,22 113:6,19 160:24 215:7</p>	<p>128:15 165:13,24 267:21 <b>accepting</b> [1] 125:1 <b>access</b> [1] 200:5 <b>accompany</b> [1] 70:1 <b>accomplished</b> [1] 43:15 <b>accord</b> [1] 41:17 <b>accordance</b> [3] 14:9 22:5 61:7 <b>according</b> [5] 11:17 67:9 155:25 158:23 290:20 <b>account</b> [2] 17:25 94:12 <b>accountable</b> [2] 17:11 18:17 <b>accounting</b> [1] 16:2 <b>accreditation</b> [1] 226:17 <b>accredited</b> [1] 298:6 <b>accuracy</b> [3] 65:20 223:9 224:20 <b>accurate</b> [3] 206:20 237:15 249:15 <b>acknowledge</b> [2] 161:14 182:14 <b>Act</b> [3] 36:20,25 213:11 <b>acted</b> [2] 8:8 36:16 <b>acting</b> [2] 22:4 80:7 <b>action</b> [13] 1:14 96:5 115:17 151:14 189:13 246:13 261:8,23 262:4,9 262:13 263:3 293:12 <b>Activities</b> [1] 186:21 <b>activity</b> [5] 245:10 259:11 260:2,7 262:15 <b>actual</b> [13] 12:22 44:20 45:18 113:4 143:19 146:17 168:22,23 210:22 213:15 224:16 287:19 297:22 <b>ad</b> [1] 48:24 <b>add</b> [2] 93:15 124:21 <b>added</b> [1] 142:24 <b>addendum</b> [1] 66:18 <b>addition</b> [2] 168:1 179:11 <b>additional</b> [6] 98:9 171:25 178:12 181:20 182:19 183:24 <b>address</b> [5] 20:2 21:24 159:24 182:1 189:13 <b>addressed</b> [14] 55:19 137:2 159:19,22 160:20 171:15 177:5 178:4,8 181:24 227:7,22 235:5 295:25 <b>addressing</b> [8] 173:23 175:22,23 228:5 282:25 283:19 284:15 285:4 <b>adequacy</b> [1] 272:18 <b>adequately</b> [1] 84:7 <b>adheres</b> [1] 272:20 <b>ADM</b> [14] 7:12,14,22,24 8:6,9 72:15 73:19 102:24 124:15 140:19,25 158:21 195:8 <b>administration</b> [1]</p>
<p>--- <b>-okay</b> [1] 31:15 <b>-Sunday</b> [1] 159:16 <b>-we</b> [1] 57:6 <b>-you</b> [1] 130:4 <hr/><b>-0-</b> <b>0074</b> [1] 27:20 <b>0125</b> [4] 113:21 140:5 288:16 297:18 <b>0165</b> [2] 159:3 177:21 <b>0198</b> [2] 122:8,13 <b>0199</b> [2] 121:25 122:3</p>	<p><b>-2-</b> <b>2</b> [5] 160:17 161:18 206:24 259:8 292:1 <b>20</b> [1] 163:17 <b>2002</b> [1] 148:7 <b>2003</b> [1] 78:24 <b>2004</b> [1] 88:14 <b>2005</b> [20] 24:2 31:5 48:18 52:21 62:9 64:14,25 67:19 138:13 177:5,14 179:9 186:20 187:3,4,12 187:20 215:7 261:14 271:14 <b>2006</b> [89] 79:20 80:14,23 111:10,14,19,21 112:20 113:6,19,22,25 136:1,2 140:6,11,17 144:3 146:6 146:21,21 147:16 148:21 148:24 149:7 150:12,19 153:2,25 154:7,7,14 159:1,7,21 160:20,24 161:15,18 163:25 164:20 166:6,23 177:20 178:20 183:10 185:17 189:25 193:2 195:18 200:24 201:15 210:15,16 211:1 217:8 221:11 227:6,11 230:8 232:5,24 233:17 234:3 235:7 236:20 237:22,25 242:8 245:13 259:15 265:7 268:3,7 269:14 273:12 275:5,5 276:18 277:10 278:17 285:23 289:7,7 291:15 292:12 293:1 298:12 299:8 <b>2006-08-18</b> [1] 288:20 <b>2007</b> [12] 57:19,21 78:24 79:21 111:22 112:15,20 113:16 286:14 289:11 293:18 296:7 <b>2008</b> [4] 1:1,5 301:5,12 <b>20th</b> [3] 27:20 30:16 64:25 <b>21</b> [1] 227:11 <b>21st</b> [10] 10:13 24:20 25:6 26:16 29:4 30:7,11 31:5 31:8 32:10</p>	<p><b>-3-</b> <b>3</b> [2] 191:13 272:14 <b>30</b> [5] 163:17 211:7,8,9 254:17 <b>300</b> [1] 2:7 <b>30th</b> [1] 186:20 <b>31</b> [6] 211:8 234:3 237:25 238:5 242:8 288:16 <b>31st</b> [6] 20:14 233:17 236:12 237:21 238:22 267:6 <b>32</b> [4] 211:8 214:23,24 215:13 <b>33</b> [1] 215:13 <b>34</b> [2] 289:5 297:18 <b>350</b> [1] 152:16 <b>37</b> [2] 2:3,4 <b>3:37</b> [1] 278:17 <b>3rd</b> [1] 187:4 <hr/><b>-4-</b> <b>4</b> [5] 187:3 191:13 192:10 271:10 272:20 <b>42</b> [1] 215:11 <b>4:41</b> [1] 233:17 <b>4:46</b> [1] 300:25 <b>4th</b> [2] 210:16 278:17</p>	<p><b>-A-</b> <b>A.D</b> [2] 301:5,12 <b>a.m</b> [1] 293:1 <b>Abbott</b> [43] 4:20 5:5,13 5:19 12:21 24:10 73:25 85:25 86:4 100:13,17 101:3,16 102:8 174:24 176:8 177:21 185:15,23 186:7 187:25 188:8 195:6 197:3 199:21 212:22 232:5 234:23 238:1,14 239:23 240:15,20,23 241:3 255:17 278:17 291:14 292:14 294:5,24 296:1,10 <b>abilities</b> [1] 169:4 <b>ability</b> [3] 34:19 165:14 301:9 <b>able</b> [7] 18:5 26:4 38:22 55:24 143:23 146:13 285:13 <b>above</b> [4] 132:20 253:24 261:13 293:4 <b>absence</b> [1] 33:15 <b>absolute</b> [2] 57:22 204:1 <b>absolutely</b> [8] 26:13 27:1,11 110:9 185:6 220:1 222:8 241:14 <b>absorb</b> [3] 83:12 135:17 139:23 <b>absorbed</b> [1] 121:14 <b>absorbing</b> [1] 139:10 <b>academic</b> [1] 257:21 <b>accept</b> [6] 9:23 83:5 123:21 174:9,13,14 <b>acceptance</b> [3] 54:5,13 63:3 <b>accepted</b> [5] 125:16</p>	<p><b>145:13</b> <hr/><b>-7-</b> <b>7</b> [3] 66:21 273:5 274:4 <b>70</b> [1] 163:18 <b>73</b> [4] 152:18 153:3,9,15 <b>77</b> [2] 2:5,7 <b>7th</b> [1] 187:12 <hr/><b>-8-</b> <b>8</b> [2] 1:5 132:10 <b>8.1</b> [2] 213:10,16 <b>8th</b> [2] 301:5,12 <hr/><b>-9-</b> <b>9</b> [2] 152:13 187:11 <b>900</b> [1] 280:22 <b>939</b> [10] 242:2,15,18 243:1 265:2,14,18 279:22 279:22 280:15 <b>9:30</b> [1] 300:19 <b>9th</b> [7] 111:19,21,22 113:6,19 160:24 215:7</p>
<p><b>-1-</b> <b>1</b> [11] 2:3 161:15,18 164:20 177:20 178:20 179:8 183:11 237:22 292:19,24 <b>1-800</b> [1] 31:25 <b>10</b> [4] 138:21 140:4 146:7 204:13 <b>100</b> [2] 26:21 211:21 <b>1006</b> [1] 287:11 <b>10:59</b> [1] 293:1 <b>11</b> [5] 126:6 140:4 146:7 153:1 187:20 <b>11:00</b> [1] 77:5 <b>12</b> [2] 78:23 148:19 <b>122</b> [1] 3:2 <b>12:41</b> [1] 291:15 <b>13</b> [2] 148:20 153:8 <b>14</b> [5] 150:10 154:14 253:11,14 254:5 <b>14th</b> [3] 79:20 201:4,6 <b>15</b> [2] 150:10 153:14 <b>15th</b> [13] 10:14 25:8 29:5 30:12,17 113:25 138:8 139:6 146:21 187:2 217:8 217:25 227:6 <b>16th</b> [1] 24:2 <b>17</b> [3] 211:5 291:15 292:12 <b>171</b> [1] 289:13 <b>174</b> [2] 263:17 264:13 <b>17th</b> [10] 25:11 47:14 57:19,21 58:10 177:4 179:9 181:8 201:1 271:14 <b>18</b> [12] 1:1 150:11 285:23</p>	<p><b>2</b> [5] 160:17 161:18 206:24 259:8 292:1 <b>20</b> [1] 163:17 <b>2002</b> [1] 148:7 <b>2003</b> [1] 78:24 <b>2004</b> [1] 88:14 <b>2005</b> [20] 24:2 31:5 48:18 52:21 62:9 64:14,25 67:19 138:13 177:5,14 179:9 186:20 187:3,4,12 187:20 215:7 261:14 271:14 <b>2006</b> [89] 79:20 80:14,23 111:10,14,19,21 112:20 113:6,19,22,25 136:1,2 140:6,11,17 144:3 146:6 146:21,21 147:16 148:21 148:24 149:7 150:12,19 153:2,25 154:7,7,14 159:1,7,21 160:20,24 161:15,18 163:25 164:20 166:6,23 177:20 178:20 183:10 185:17 189:25 193:2 195:18 200:24 201:15 210:15,16 211:1 217:8 221:11 227:6,11 230:8 232:5,24 233:17 234:3 235:7 236:20 237:22,25 242:8 245:13 259:15 265:7 268:3,7 269:14 273:12 275:5,5 276:18 277:10 278:17 285:23 289:7,7 291:15 292:12 293:1 298:12 299:8 <b>2006-08-18</b> [1] 288:20 <b>2007</b> [12] 57:19,21 78:24 79:21 111:22 112:15,20 113:16 286:14 289:11 293:18 296:7 <b>2008</b> [4] 1:1,5 301:5,12 <b>20th</b> [3] 27:20 30:16 64:25 <b>21</b> [1] 227:11 <b>21st</b> [10] 10:13 24:20 25:6 26:16 29:4 30:7,11 31:5 31:8 32:10</p>	<p><b>-5-</b> <b>5</b> [2] 62:4 187:6 <b>5th</b> [5] 10:14 25:7 29:4 30:11 187:20 <hr/><b>-6-</b> <b>6</b> [2] 62:22 273:2 <b>60</b> [1] 163:18 <b>69</b> [2] 2:4,5 <b>6th</b> [5] 144:3,9,16 145:9</p>	<p><b>145:13</b> <hr/><b>-7-</b> <b>7</b> [3] 66:21 273:5 274:4 <b>70</b> [1] 163:18 <b>73</b> [4] 152:18 153:3,9,15 <b>77</b> [2] 2:5,7 <b>7th</b> [1] 187:12 <hr/><b>-8-</b> <b>8</b> [2] 1:5 132:10 <b>8.1</b> [2] 213:10,16 <b>8th</b> [2] 301:5,12 <hr/><b>-9-</b> <b>9</b> [2] 152:13 187:11 <b>900</b> [1] 280:22 <b>939</b> [10] 242:2,15,18 243:1 265:2,14,18 279:22 279:22 280:15 <b>9:30</b> [1] 300:19 <b>9th</b> [7] 111:19,21,22 113:6,19 160:24 215:7</p>	<p><b>128:15 165:13,24 267:21</b> <b>accepting</b> [1] 125:1 <b>access</b> [1] 200:5 <b>accompany</b> [1] 70:1 <b>accomplished</b> [1] 43:15 <b>accord</b> [1] 41:17 <b>accordance</b> [3] 14:9 22:5 61:7 <b>according</b> [5] 11:17 67:9 155:25 158:23 290:20 <b>account</b> [2] 17:25 94:12 <b>accountable</b> [2] 17:11 18:17 <b>accounting</b> [1] 16:2 <b>accreditation</b> [1] 226:17 <b>accredited</b> [1] 298:6 <b>accuracy</b> [3] 65:20 223:9 224:20 <b>accurate</b> [3] 206:20 237:15 249:15 <b>acknowledge</b> [2] 161:14 182:14 <b>Act</b> [3] 36:20,25 213:11 <b>acted</b> [2] 8:8 36:16 <b>acting</b> [2] 22:4 80:7 <b>action</b> [13] 1:14 96:5 115:17 151:14 189:13 246:13 261:8,23 262:4,9 262:13 263:3 293:12 <b>Activities</b> [1] 186:21 <b>activity</b> [5] 245:10 259:11 260:2,7 262:15 <b>actual</b> [13] 12:22 44:20 45:18 113:4 143:19 146:17 168:22,23 210:22 213:15 224:16 287:19 297:22 <b>ad</b> [1] 48:24 <b>add</b> [2] 93:15 124:21 <b>added</b> [1] 142:24 <b>addendum</b> [1] 66:18 <b>addition</b> [2] 168:1 179:11 <b>additional</b> [6] 98:9 171:25 178:12 181:20 182:19 183:24 <b>address</b> [5] 20:2 21:24 159:24 182:1 189:13 <b>addressed</b> [14] 55:19 137:2 159:19,22 160:20 171:15 177:5 178:4,8 181:24 227:7,22 235:5 295:25 <b>addressing</b> [8] 173:23 175:22,23 228:5 282:25 283:19 284:15 285:4 <b>adequacy</b> [1] 272:18 <b>adequately</b> [1] 84:7 <b>adheres</b> [1] 272:20 <b>ADM</b> [14] 7:12,14,22,24 8:6,9 72:15 73:19 102:24 124:15 140:19,25 158:21 195:8 <b>administration</b> [1]</p>

<p>11:14 <b>administrative</b> [2] 97:7 160:12 <b>admit</b> [1] 197:13 <b>admonish</b> [1] 127:4 <b>admonishments</b> [1] 215:18 <b>ADMs</b> [4] 6:12,18 73:17 85:11 <b>adopted</b> [1] 295:5 <b>advance</b> [3] 4:10 67:22 68:12 <b>advances</b> [1] 64:9 <b>adverse</b> [1] 219:16 <b>adversely</b> [2] 173:24 283:4 <b>advice</b> [23] 21:10 23:2 95:25 96:3,4,6 97:14 104:19 105:15,20,23 128:16,22,24 129:15,20 133:17,18,21 134:3 135:7 199:8 256:14 <b>advise</b> [4] 35:2 145:17 291:10 293:15 <b>advised</b> [10] 46:19,25 47:7 72:8 76:16 144:13 145:10 212:6 266:20,25 <b>advising</b> [3] 21:7 36:22 151:17 <b>advisor</b> [8] 90:11 91:7 91:21 92:17 105:2,5,12 202:16 <b>advocate</b> [1] 81:4 <b>affairs</b> [1] 51:24 <b>affected</b> [5] 173:25 244:19 247:8 258:7 283:5 <b>affecting</b> [1] 169:24 <b>affidavit</b> [1] 112:7 <b>afternoon</b> [2] 154:6 231:14 <b>again</b> [66] 5:5 7:15 11:10 21:16 25:9 27:23 28:21 32:15 33:19 35:9 40:18 44:20 45:7 50:3 71:18 74:4 78:24 94:16 101:4 101:23 110:9 117:4 125:4 130:9 134:4,20 135:12 139:9 140:5 148:12 153:9 153:14 154:6 181:1 185:6 187:12,22 198:2 199:6 200:20 201:23 202:14 206:12 208:3 209:3 215:1 215:6 220:6 248:5 249:10 252:20 256:13,21 260:11 262:14 269:6 270:3,10 271:18 276:10 278:16 283:1,24 284:9 295:2 297:10 <b>against</b> [6] 150:23 152:3 222:13 260:9,18 262:11 <b>agencies</b> [4] 71:18 74:17 125:16 240:7 <b>agency</b> [8] 6:24 71:18 161:5 177:4 240:10 243:21 294:23 295:7 <b>aging</b> [1] 10:3</p>	<p><b>ago</b> [7] 15:15 27:7 43:6 57:9 113:3 159:16 191:21 <b>agree</b> [4] 181:7,16,17 224:14 <b>agreed</b> [2] 182:18 220:11 <b>agrees</b> [1] 163:9 <b>ahead</b> [8] 141:15 144:23 165:5 167:20 176:19 204:14 239:21 294:19 <b>aid</b> [1] 218:21 <b>air</b> [1] 278:22 <b>aired</b> [1] 223:3 <b>al</b> [1] 1:10 <b>alarm</b> [1] 135:11 <b>alarming</b> [1] 135:20 <b>alarms</b> [1] 133:18 <b>alert</b> [1] 157:10 <b>alleging</b> [1] 172:10 <b>allotments</b> [1] 50:18 <b>allotted</b> [1] 51:16 <b>allow</b> [6] 4:13 41:4 42:9 42:9 61:7 77:7 <b>allowance</b> [1] 20:5 <b>allowed</b> [2] 37:11 57:12 <b>allowing</b> [1] 70:15 <b>allows</b> [1] 33:19 <b>almost</b> [5] 30:18 82:5 129:25 155:18 211:20 <b>alone</b> [2] 11:21 278:12 <b>along</b> [3] 205:21 226:25 255:15 <b>alteration</b> [1] 100:9 <b>always</b> [5] 13:12 60:3 116:24 128:15 130:7 <b>among</b> [2] 65:6 263:7 <b>amongst</b> [4] 15:24 191:1 225:8 263:12 <b>amount</b> [3] 51:16 156:12 242:6 <b>analysis</b> [11] 63:14,19 63:24,24 64:1,6 65:16 65:19 66:15,17 70:25 <b>analyze</b> [1] 40:25 <b>ancient</b> [1] 73:5 <b>Annex</b> [1] 63:21 <b>announced</b> [4] 52:21 58:9,10,25 <b>annual</b> [3] 15:16,19 17:25 <b>annually</b> [1] 152:17 <b>answer</b> [50] 15:11 17:14 21:15 55:3 83:6 97:8 111:17 113:22 114:9,14 115:3,20,24 116:21 117:3 117:5,8,11,13,18,21 119:22 120:11 121:9 124:2 125:25 126:1,10 127:14,20 129:18 130:3 130:5,7,8,15,17,23 132:8 140:5 143:24 146:13 148:20 150:12 198:12 207:14 216:10 269:16 284:19 296:19 <b>answered</b> [3] 33:24</p>	<p>127:25 131:22 <b>answering</b> [2] 17:1 124:9 <b>answers</b> [25] 38:16 115:5 116:3,15,17 117:2 120:5 120:15,17,18,19,22 121:18 128:19 129:9,16 129:22,23 131:19,21 132:21 155:14 269:17,21 269:22 <b>antibody</b> [1] 272:4 <b>anticipate</b> [2] 123:7 231:3 <b>anticipated</b> [13] 115:21 115:23 116:10 119:15 121:18 126:11,13 129:19 129:20 131:7 132:18 150:21 207:8 <b>anticipating</b> [1] 262:10 <b>antigen</b> [1] 272:3 <b>anxiety</b> [1] 266:11 <b>anyhow</b> [1] 211:15 <b>anyway</b> [2] 67:6 216:16 <b>apologize</b> [7] 4:10 80:2 122:6 186:15 218:2 221:11 275:7 <b>apparatus</b> [1] 301:10 <b>apparent</b> [1] 188:3 <b>appear</b> [2] 116:16 290:25 <b>Appearances</b> [1] 1:6 <b>appeared</b> [1] 212:3 <b>applied</b> [1] 260:8 <b>apply</b> [1] 127:6 <b>appoint</b> [2] 14:23 15:3 <b>appointed</b> [7] 5:21 14:10 79:6,9 81:16,18 82:6 <b>appoints</b> [1] 14:7 <b>appreciate</b> [29] 33:14 39:25 45:20 56:6,22 78:6 80:12 94:9 105:1 106:8 108:16 123:6 135:3 171:6 186:17 188:6 201:8 209:25 210:6 213:22 218:16 249:15 256:25 257:1 277:16,18 280:8 281:8 293:17 <b>approach</b> [6] 13:23 60:23 123:18 125:13,17 222:15 <b>appropriate</b> [3] 15:20 27:17 279:14 <b>appropriately</b> [2] 33:22 285:4 <b>approve</b> [1] 293:5 <b>approved</b> [7] 51:4 52:3 140:18 146:8,19 150:18 293:14 <b>April</b> [35] 1:5 20:14 135:24 137:25 138:7 140:11,16 141:21 142:10 142:12,18 143:9 146:6 146:21 147:16 148:25 149:4,25 150:9 153:2 155:24 159:7,21 163:25 170:1 171:14 174:6 177:20 183:10 185:17</p>	<p>189:25 208:19 232:4,24 301:5 <b>area</b> [3] 7:14,24 249:12 <b>areas</b> [8] 8:2,6 15:25 16:3,7 84:1 183:2 229:9 <b>arises</b> [2] 119:14 259:19 <b>arising</b> [3] 4:18 36:2,4 <b>arm</b> [1] 69:17 <b>arm's</b> [1] 98:12 <b>arose</b> [1] 32:20 <b>arrival</b> [5] 5:22 6:6,6 86:17 93:14 <b>arrived</b> [12] 51:4 78:8 80:22 85:7 87:9,17 92:12 92:16 113:2 215:8 230:20 231:7 <b>arriving</b> [2] 5:18 230:18 <b>arrow</b> [1] 222:10 <b>article</b> [7] 64:13,14 233:23 235:5 243:6 261:18 267:19 <b>ASAP</b> [1] 207:22 <b>ascertain</b> [1] 182:15 <b>aside</b> [1] 130:14 <b>aspects</b> [1] 81:14 <b>Assembly</b> [16] 9:19 25:10 51:5 70:2 78:22 81:4 83:4 103:2 108:2 109:10 114:16 126:16 143:3 148:24 205:20 224:3 <b>assertion</b> [3] 134:10 135:22 184:2 <b>assess</b> [3] 40:25 149:25 208:19 <b>assessment</b> [1] 138:1 <b>assist</b> [6] 9:17 26:4 67:12 69:18 71:15 154:16 <b>assistance</b> [3] 77:11 204:15 288:15 <b>assistant</b> [26] 7:3 8:16 12:21 40:10,14,18 41:6 72:4,23 79:2 85:25 87:18 88:9 91:5,19 104:7,8 105:11,16,17,21 160:12 202:10 234:1,17 287:16 <b>Assistants</b> [2] 104:12 104:13 <b>assisted</b> [1] 155:2 <b>associated</b> [1] 189:6 <b>association</b> [9] 1:15 62:16 159:23 160:19 164:1 174:7 178:11 183:23 184:7 <b>assume</b> [4] 10:6 36:21 46:8 49:11 <b>assumed</b> [3] 12:13 114:4 265:14 <b>assuming</b> [2] 82:8 83:24 <b>assurance</b> [1] 110:14 <b>Atlantic</b> [2] 78:13 230:6 <b>attached</b> [6] 63:12,25 66:17 210:20 278:21 293:3</p>	<p><b>attachments</b> [1] 62:10 <b>attack</b> [1] 219:18 <b>attempt</b> [1] 278:7 <b>attempted</b> [1] 34:17 <b>attempts</b> [1] 47:16 <b>attended</b> [2] 4:20 57:24 <b>attending</b> [1] 258:15 <b>attention</b> [13] 64:18,24 152:15 163:13 184:16 190:2,5 211:11 217:12 251:16 272:16,21 291:12 <b>attract</b> [1] 165:17 <b>attractive</b> [1] 169:2 <b>attributed</b> [1] 212:12 <b>attributing</b> [1] 203:2 <b>AUDIO</b> [1] 166:21 <b>August</b> [30] 10:13,14 24:2 25:8,9 29:4 30:11 30:11,17 202:18 237:22 268:2,7 275:5 278:17 285:22 286:10 287:11 289:6,7,19 291:15 292:7 292:8,12,25 296:7 297:4 298:12 299:7 <b>author</b> [1] 176:22 <b>authorities</b> [10] 1:18 7:18 14:2,20 15:3,14 16:16 18:16 140:20 219:12 <b>authority</b> [7] 1:12 14:14 15:9 17:24 20:21 22:24 75:23 <b>authors</b> [1] 176:23 <b>automated</b> [2] 206:18 206:19 <b>availability</b> [1] 66:7 <b>available</b> [7] 56:19 117:3 127:2 128:22 129:17 130:8 209:17 <b>avoid</b> [1] 272:13 <b>aware</b> [52] 9:13 20:8 38:11 47:11,13,19,22 59:13 84:2 103:1,4 144:7 146:14 156:10 177:25 178:1 214:12 225:2,12 230:9,20 235:17,19 238:9 240:22,24 242:17,22 243:6,11,16,23 245:13 246:16 258:4 273:2 276:15,21 277:10,13 279:21 286:3,4,6,8 288:7 294:12 295:14,25 296:6 296:9,23 <b>awareness</b> [1] 84:13 <b>awhile</b> [1] 67:23</p> <hr/> <p style="text-align: center;"><b>-B-</b></p> <p><b>B</b> [3] 288:21,22,23 <b>B.C</b> [4] 177:4 187:19,24 188:2 <b>background</b> [5] 78:5 147:19 187:14 223:2 257:21 <b>bad</b> [1] 102:15 <b>balance</b> [2] 6:2 33:18</p>
---	--	---	---	--

<p><b>balanced</b> [2] 15:19 16:9  <b>ball</b> [1] 132:1  <b>Banerjee</b> [24] 159:22  160:25 165:1,14 167:1  168:22 171:5,15,23  176:14 177:8 178:5  180:21 181:24 182:18  185:8 186:5 188:23  271:13,19 273:23 275:24  276:20 277:13  <b>Banerjee's</b> [4] 166:5  183:5 271:12 277:1  <b>Barnes</b> [1] 288:22  <b>based</b> [10] 80:14 96:5  123:24 126:17 199:9  206:14 226:12,15,15  244:17  <b>basis</b> [14] 7:6 17:25 25:2  25:4 30:1 39:12 69:16  73:11 91:24 95:10,14  96:11 182:22 198:6  <b>basket</b> [1] 163:20  <b>batteries</b> [1] 257:6  <b>battery</b> [1] 275:20  <b>battle</b> [2] 56:17 213:20  <b>bear</b> [1] 159:12  <b>bearing</b> [1] 179:15  <b>became</b> [12] 20:8 38:11  74:16,17 80:13 94:14  95:6 112:1 200:20,21  238:9 296:6  <b>become</b> [6] 144:7 235:18  286:8 294:12 295:24  296:9  <b>becoming</b> [2] 87:4 90:13  <b>began</b> [8] 137:20 148:13  193:22 194:2 280:6,8,9  280:11  <b>begin</b> [3] 138:2 183:12  282:1  <b>beginning</b> [5] 28:8,13  64:16 150:7 277:10  <b>begins</b> [2] 168:24 293:3  <b>behalf</b> [2] 21:2 184:25  <b>belief</b> [3] 28:6 228:4  273:24  <b>beliefs</b> [1] 34:18  <b>believes</b> [1] 112:20  <b>believing</b> [2] 178:9  255:17  <b>belonged</b> [1] 207:5  <b>below</b> [6] 66:21 76:4  233:25 242:5,6 245:5  <b>Belvedere</b> [1] 162:22  <b>benefit</b> [5] 7:18,19 13:15  37:4 67:13  <b>benefited</b> [1] 67:15  <b>benefits</b> [1] 229:6  <b>Bernard</b> [5] 1:7 2:4,7  37:17 77:22  <b>best</b> [21] 15:11 22:5 33:18  34:19 35:1 96:3 128:22  129:17 130:3,3,4 131:22  131:22 156:23 157:19  179:25 180:16 181:11</p>	<p>200:13 211:16 301:9  <b>better</b> [10] 66:2 104:5  178:22 182:6 184:25  206:4 226:10 273:5 274:5  276:1  <b>between</b> [14] 12:19 16:22  27:21 38:19 39:12 62:16  67:7 102:20 115:1 133:17  133:21 156:22 192:23  237:17  <b>Bev</b> [1] 24:7  <b>beyond</b> [1] 179:12  <b>big</b> [1] 45:20  <b>binder</b> [2] 82:9 83:9  <b>bit</b> [5] 62:5 78:5 148:11  156:18 271:11  <b>Blackberry</b> [3] 236:14  236:18 237:5  <b>blame</b> [1] 202:4  <b>blocks</b> [1] 273:3  <b>BN</b> [1] 233:18  <b>board</b> [39] 6:22 7:8 8:17  14:6,7,9 15:3,18,22 16:1  16:3,22,25 17:9,11,17  18:1 20:3 36:11,16 37:14  44:17,23 50:4 74:6,11  74:18 75:13 76:1 86:8  86:12 95:5 175:18 182:10  230:16,21,22,24 235:25  <b>boardroom</b> [3] 26:11  27:9 211:18  <b>boards</b> [4] 14:20,23  36:22,23  <b>Bob</b> [1] 210:14  <b>body</b> [1] 98:12  <b>bold</b> [6] 119:15,16,20  126:22 227:11 293:4  <b>Bonnell</b> [2] 31:7 32:8  <b>book</b> [10] 8:8 82:23 83:11  85:18 139:12,15 141:18  141:21 142:22 207:5  <b>books</b> [1] 143:3  <b>born</b> [1] 78:11  <b>borrow</b> [1] 92:8  <b>bottom</b> [16] 31:12,23  111:13 112:3 142:14  147:19 152:1 159:24  204:17,18 219:9 222:12  223:16 245:7 259:10  289:5  <b>brackets</b> [1] 130:14  <b>Bradbury</b> [5] 160:4,13  161:24 162:9 163:2  <b>Bradbury's</b> [1] 162:24  <b>branch</b> [2] 162:5,9  <b>branches</b> [1] 7:2  <b>breadth</b> [1] 6:10  <b>break</b> [5] 77:4,15 166:13  231:15 300:14  <b>breast</b> [14] 1:13 64:19  65:6 66:8 67:1 116:1,2  132:20 133:4 152:17  169:22 176:2 183:14  226:20  <b>Brian</b> [2] 92:4,5</p>	<p><b>brief</b> [5] 34:8 83:23  103:14 129:22,23  <b>briefed</b> [24] 25:2 29:23  38:5 53:5,7,16 55:13,13  81:25,25 82:12,24 83:19  84:7 85:8,20 106:11,17  109:5,7,8,15 185:23  270:7  <b>briefing</b> [206] 25:6,7,8,9  25:11 26:16 47:13 57:18  57:25 69:22,25 72:7  82:10,13 83:11 85:11,15  85:17,17,18 101:8 111:9  111:17,25 112:4,12,14  113:22 114:2,9,13,14,16  114:17 115:4,8,15,17,20  115:25 117:5 119:1,3  120:11 121:15 123:21  125:5,14,20,22,23,24,25  126:1,2,3,10,20 127:3,8  127:8,18 128:5,17 129:5  129:13,21,22 130:22  131:11,17,18 135:24,25  136:2,4,17 138:22 139:4  139:6,12,12,13,14,14,16  140:6 141:18,19,20,22  142:5,22 143:3,7,20  144:1,9 145:22,22 146:4  146:5,10,22 147:5,16  148:21 150:11,13 152:2  153:2 155:2,6 158:24  159:8 186:19 187:4,12  187:20 188:14,22 190:19  191:19 192:9,14,17 193:3  194:24 199:25 200:3,4  203:18 205:22 206:23  207:3,5 212:4,8 216:18  217:8,23 219:24 220:6  220:20 232:3,10 233:19  233:21 235:3,14,20 236:5  237:23 238:2,8 239:5,8  239:10,13 240:2,2,5,18  243:18,21 244:7 245:21  250:16 252:10,13 259:13  259:24 265:18 268:5,16  268:20,23 269:4,6,8,10  269:12 270:5,12,18,23  285:21 287:9,14 288:3  288:17 289:3 291:16  292:8 293:1,5,10,19  294:6,11,22 295:6,13  296:7,23 298:17  <b>briefings</b> [8] 71:11 82:11  82:14 121:19 152:1  211:15 232:8 269:10  <b>briefly</b> [1] 63:8  <b>bring</b> [12] 63:16 108:10  110:22 122:19 140:16  183:11 204:5 211:10  213:5,9 214:25 217:12  <b>bringing</b> [2] 62:24 70:22  <b>brings</b> [1] 103:21  <b>British</b> [4] 161:2,5  186:25 187:8  <b>broad</b> [1] 126:17  <b>broadly</b> [1] 22:22  <b>broke</b> [1] 166:24  <b>brought</b> [11] 10:4 58:16  61:19 88:17 93:5,8  150:23 184:16 190:5</p>	<p>209:11 251:16  <b>Browne</b> [9] 42:16,20,25  43:8 46:2 281:10,15,16  282:2  <b>Browne/Jane</b> [1] 1:10  <b>Brunswick</b> [1] 63:9  <b>brush-strokes</b> [1] 15:8  <b>budget</b> [19] 15:19 16:9  16:14,17 17:7 18:10,18  20:13,18,20 50:5 51:9  51:11 75:8 82:6 83:7,9  91:16 139:19  <b>budgetary</b> [6] 17:3,21  18:1 49:24 52:4,14  <b>Building</b> [1] 162:23  <b>bullet</b> [31] 31:13,20,23  66:22 127:10 132:17  136:19 148:12 149:19  152:16 153:3,9,15 156:1  179:16 180:4 181:7 187:7  187:15,22 192:5 194:4  208:16,16 218:21,22  219:11 222:5,11 223:1,3  <b>Burin</b> [1] 52:20  <b>business</b> [2] 78:19,20  <b>busy</b> [1] 82:3  <b>by/approved</b> [1] 290:11</p>	<p>176:2 177:4,9 183:14  186:25 187:9,19,24 188:2  223:7 226:18,20 228:21  229:10 247:7 255:4  <b>cannot</b> [7] 26:12,21  27:10 44:11 48:6 57:21  200:8  <b>canvas</b> [2] 231:2,4  <b>capacity</b> [5] 8:12 9:16  35:13 61:5 229:8  <b>caps</b> [3] 126:22 227:11  293:4  <b>caption</b> [1] 228:17  <b>carcinoma</b> [1] 245:5  <b>care</b> [27] 5:17,23 7:17  11:14,25 12:15 14:20  15:13 17:24 33:4 74:20  75:22 86:12,14 94:17  132:23 173:24 218:10  219:13,15,17,25 228:19  229:10,12 247:7 255:4  <b>career</b> [1] 130:21  <b>careful</b> [2] 35:4 270:19  <b>carefully</b> [3] 170:2 171:4  171:8  <b>carried</b> [4] 8:11 10:7  99:8,11  <b>carry</b> [1] 99:3  <b>carrying</b> [1] 110:12  <b>case</b> [8] 32:3 37:4 71:18  73:15 75:23 76:12 118:16  243:11  <b>cases</b> [9] 254:23 256:5  272:7 279:12,16 282:23  282:25 283:16,19  <b>catching</b> [1] 192:3  <b>category</b> [6] 237:6,6  247:5 251:3 254:5,25  <b>Cathy</b> [6] 160:4,12  161:24 162:9,24 163:2  <b>caucus</b> [1] 79:2  <b>caught</b> [2] 132:2 239:17  <b>caused</b> [7] 183:18 193:5  203:14 216:1 225:10  281:25 299:13  <b>causes</b> [2] 190:3 273:13  <b>causing</b> [1] 266:11  <b>caveats</b> [1] 257:1  <b>CB</b> [3] 160:1,4 161:24  <b>CBC</b> [2] 64:25 223:3  <b>cc'd</b> [2] 161:5 227:15  <b>central</b> [10] 1:17 69:16  71:17 125:16 180:2 240:7  240:9 243:21 294:23  295:7  <b>centre</b> [2] 192:7 226:18  <b>CEO</b> [7] 12:12 38:22  48:22 76:4,6,16 94:17  <b>CEO's</b> [1] 76:3  <b>certain</b> [26] 5:3,4 29:11  51:15 52:19 62:9 94:24  100:25 101:1 121:22  129:10 143:23 160:7  185:4 186:2 200:11  211:19,21 241:15 245:3</p>
--	--	--	---	--

-C-

<p>248:25 256:7,9 257:14 269:24 271:21</p> <p><b>certainly</b> [78] 11:10 16:1 19:25 20:23 21:2,24 23:16 31:9 32:12 36:20 38:10,15 41:16 43:7 46:7 47:1 48:10 52:13 56:22 59:13 60:19 67:25 68:4 68:7 71:7 83:3 84:9 89:16 96:14,15 104:4 106:7 109:25 111:25 118:24 119:1 121:17 130:21 136:19 154:11 161:9 163:5 166:17 171:6 178:1 179:2 181:9 182:14 188:1,2,6 191:23 194:14 194:16 197:24 200:4 201:11 204:8 206:13 211:5,9 214:2 225:2 228:1 237:22 243:11 248:7,14 252:23 258:10 263:12 269:5,15 276:25 277:19 279:21 282:18 286:4</p> <p><b>certainty</b> [4] 57:22 203:16 204:1 211:20</p> <p><b>Certificate</b> [2] 2:8 301:1</p> <p><b>certify</b> [1] 301:2</p> <p><b>Chai</b> [1] 1:9</p> <p><b>chair</b> [4] 36:11 37:5 79:2 227:14</p> <p><b>Chairperson</b> [1] 95:4</p> <p><b>Chairs</b> [2] 15:13 16:3</p> <p><b>change</b> [15] 8:7 30:10,15 44:15 53:25 73:10 98:17 125:9 137:12,13 157:11 259:4,5 284:5 293:7</p> <p><b>changed</b> [4] 147:10 157:14 254:16 255:23</p> <p><b>changes</b> [4] 83:10 110:17 189:8 296:5</p> <p><b>changing</b> [2] 255:22 256:1</p> <p><b>characterization</b> [1] 24:21</p> <p><b>characterize</b> [3] 5:12 11:7 13:7</p> <p><b>characterized</b> [1] 29:11</p> <p><b>Chard</b> [1] 8:10</p> <p><b>charge</b> [2] 73:19 76:17</p> <p><b>Chaytor</b> [1] 1:8</p> <p><b>check</b> [2] 41:10 196:11</p> <p><b>checked</b> [1] 237:21</p> <p><b>checking</b> [2] 237:11,11</p> <p><b>checks</b> [2] 237:1,4</p> <p><b>Cheeseman</b> [1] 288:24</p> <p><b>chemotherapy</b> [3] 65:11 247:3 250:4</p> <p><b>chief</b> [9] 94:3 177:12 186:24 187:1,8,18,23 188:1 279:1</p> <p><b>Chiefs</b> [3] 247:6 255:3 258:12</p> <p><b>Child</b> [1] 7:3</p> <p><b>choice</b> [2] 32:3 273:3</p> <p><b>chosen</b> [1] 41:4</p>	<p><b>church</b> [2] 86:24,25</p> <p><b>circled</b> [2] 207:13,19</p> <p><b>circumstance</b> [1] 151:7</p> <p><b>circumstances</b> [3] 38:13 41:1 96:9</p> <p><b>citizen</b> [1] 109:13</p> <p><b>claim</b> [19] 150:23 151:3 151:20 152:2 222:13 223:4 245:10,10 259:11 259:12,22 260:8,17,23 261:5,6,13,13,15</p> <p><b>claimants</b> [1] 262:11</p> <p><b>claims</b> [3] 259:22 261:18 261:19</p> <p><b>clarification</b> [1] 36:8</p> <p><b>clarify</b> [3] 38:8 69:6 282:14</p> <p><b>clarity</b> [1] 124:21</p> <p><b>class</b> [7] 1:14 261:8,23 262:4,9,13 263:3</p> <p><b>clear</b> [17] 4:23 9:10 17:9 19:22,24 21:15 26:10 27:1 42:3 50:3 101:2,15 156:16 182:17 203:13 282:18 295:12</p> <p><b>clearer</b> [1] 26:3</p> <p><b>clearly</b> [11] 20:24 25:16 26:9,13 28:5,24,24 30:20 38:9 73:8 269:2</p> <p><b>Clinic</b> [4] 98:21 99:2,24 100:10</p> <p><b>clinical</b> [6] 161:1 247:6 254:16 255:3,21 258:12</p> <p><b>clinically</b> [2] 256:23 257:5</p> <p><b>clinicians</b> [4] 46:9 273:6 274:7 275:25</p> <p><b>close</b> [4] 99:3,5 134:15 262:15</p> <p><b>closed</b> [4] 99:13 154:8 154:19 205:20</p> <p><b>closely</b> [8] 69:12 133:1,7 134:14 135:5 136:7,11 262:19</p> <p><b>clue</b> [1] 28:16</p> <p><b>co-authors</b> [1] 184:2</p> <p><b>co-counsel</b> [3] 1:7,8 144:5</p> <p><b>code</b> [1] 161:7</p> <p><b>Coffey</b> [654] 1:7 2:4,7 36:2,3,6 37:16,17,19 38:4,17 39:6,11,24 40:11 40:15,20,21 41:8,18 42:2 42:11,15,22 43:1,19,22 44:2,14,22 45:2,6,10,17 46:1,6,13,18,24 47:6,10 47:21 48:2,7,13 49:4,8 49:15,22 50:2,8,12,17 50:22 51:2,8,14,19 52:1 52:8,12,18,24 53:3,10 53:19 54:1,7,10,16,22 55:2,6,11,25 56:5,15 57:15,23 58:8,14,19 59:1 59:6,12,18,25 60:7,16 61:1,9,14,22 62:14,21 63:15,20 64:2,12 66:19</p>	<p>67:5,11,17 68:3,13,18 68:19,24 77:2,3,12,18 77:19,22,24 78:2,3 79:14 80:3,11,19 81:8,15,21 82:15,21 83:13,17 84:11 84:21 85:6,19 86:2,18 87:3,7,12,16 88:2,6,10 88:15,24 89:7,19 90:2,8 90:12,17 91:6,10 92:11 92:15,21,25 93:10,16,22 94:1,8,19 95:3,9,15 96:7 96:17,18,25 97:20 98:23 99:16 100:12,19 101:6 101:13,19 102:1,7,13 103:12,20 104:6,23 105:6 105:22 106:6 107:8,18 108:15 109:3 110:3,18 111:2,7 112:9,16,19,25 113:17 114:5,18,19,24 115:7,19 116:20 117:15 118:1,3,8,15,19,23 119:7 119:13,19,25 120:4 121:20 122:2,11,18,23 123:5 124:5,18,23 125:6 125:18 127:23 128:4,11 129:1,24 130:11 131:1 132:3,9,15 133:20,25 134:9 135:2,21 136:18 137:18 138:20 139:2,24 140:3,9,10,14,24 141:4 141:10,14,25 142:7,11 142:19 143:1,14,25 144:12,22 145:3,16 146:3 146:15 147:2,9,14,24 148:4,8,18 149:6,13,17 150:5,17 151:15 152:4 152:10,25 153:7,13,19 153:23 154:5,13 155:10 155:16,22 156:6,25 158:15,20,25 159:5,6,11 160:8,14 161:11,22 162:3 162:8,16 163:1,11,21 164:10,17,24 165:4 166:3 166:9,14,22 167:5,9,15 167:19 168:8,15,21 169:8 169:17 170:5,12,17,22 171:2,11,16 172:4,9,15 172:22 173:1,17 174:4 174:16,23 175:3,12 176:6 176:12,17,25 177:18 178:2,18,25 179:6 180:9 180:19,25 181:6 182:2 182:12 183:8 184:4,12 184:18,22 185:13,21 186:9,14 188:12,17 189:1 189:24 190:14,20,24,25 191:6,12,17,22 192:8 193:1,9,15 194:1,9,19 195:4,11,17 196:4,20 197:1,17,23 198:11 199:15 201:7,18 202:6 202:19 203:11 204:7,11 205:17 206:2,9,21 207:6 207:11,18,23 208:12 209:9,16,24 210:5,10 212:5,11,16,20 213:2,8 213:14,21 214:8,13,22 215:5,24 216:15,22 217:2 217:17,24 218:3,14,20 219:3,8 220:2,8,13,22 221:6,9,10,14,23 222:3 222:9,21,25 223:23 224:8 225:1,16,20 226:11 227:4</p>	<p>228:7,12 229:5 230:7 231:1,14,16,24,25 232:11 232:16,22 233:4,10,14 234:10,16,21 235:1,12 235:23 236:3,11,19,24 237:9,16,20 238:10,15 238:20,25 239:11,16,20 240:8,13 241:2,9,16,23 242:12,17,20,25 243:5 243:10,15,25 244:8,13 244:21 245:2,17,24 246:9 246:22 247:20 248:8,20 249:6,14,19 250:5,9,13 251:2,7,12,17,22 252:7 252:16,24 253:9,17,18 253:23 254:3,12 255:10 255:18 256:2,8,20,24 257:10,25 258:8,22 259:7 261:3,11,22 262:20,25 263:11,15 264:8,21 265:5 265:12,20 266:19,24 267:4,13,22 268:12,24 269:13,20 270:6,22 271:5 271:9,17 274:3,16,21,25 275:4,7,10,15,23 276:14 277:4,9,15 278:8,10 279:20 280:1,7,18,24 281:7,13,18 282:7 283:6 283:11,20 284:3,11,20 284:21 285:3,7,15,19 286:1,7,11,15 288:13 289:2,15,24 290:4,9,16 291:1,7,24 292:6,11,18 292:22 293:23 294:2,14 294:18 295:11,17,22 296:4 297:16 298:11,20 298:25 299:6,12,17,23 300:4,10,15</p> <p><b>collective</b> [3] 49:13,19 129:8</p> <p><b>College</b> [2] 78:12,13</p> <p><b>Columbia</b> [4] 161:3,5 186:25 187:8</p> <p><b>combination</b> [2] 127:22 131:24</p> <p><b>comfort</b> [8] 108:7 137:8 279:7,18 282:9,15 284:24 285:1</p> <p><b>comfortable</b> [6] 137:5 185:22 192:3 195:1 199:24 266:13</p> <p><b>coming</b> [11] 36:6 76:18 121:12 136:21 139:20 155:23 196:10 198:5 201:10 202:20 279:10</p> <p><b>commence</b> [1] 166:19</p> <p><b>comment</b> [14] 4:22 6:9 27:25 32:2 15:2,19 152:9 188:10,21,25 222:18 224:17 262:18 285:13</p> <p><b>commented</b> [4] 4:19 6:10,11 18:23</p> <p><b>commenting</b> [1] 259:17</p> <p><b>comments</b> [2] 6:8 224:10</p> <p><b>Commission</b> [20] 1:2,7 1:8 35:5 58:4,9,10,25 135:13 144:4,5 145:17 159:15 191:20,21 209:18</p>	<p>225:4 268:2 301:4,7</p> <p><b>Commission's</b> [1] 123:13</p> <p><b>Commissioner</b> [149] 1:4 2:5 4:1,12 17:13 23:4,10 23:11,16 34:4,5,10 35:22 36:1,5 37:3,15,20 42:18 42:24 61:16,20,23 68:25 69:1,7,21 70:11,21 71:3 71:20 72:1,19 73:2,12 73:14,21 74:2,9,15 75:1 75:6,11,18,25 76:8,15 76:21,25 77:1,4,9,13,14 77:17,20 87:21,25 108:18 110:19 111:22 112:2,8 112:18 113:8,14 121:24 122:7,14,21,25 148:16 157:12,16,20,25 158:1,7 160:15 166:10,12,18 172:20,24 173:4,7,11,16 173:19 174:2 186:12 190:21 191:3,8,9,14 192:10 198:25 199:5,13 200:19,25 201:3,5 209:10 213:19,23 231:13,17,18 231:20,23 232:1 273:1 275:5 277:22 280:21 281:22 282:4,11,17,19 284:17,22 287:1,6,18,24 288:5,10,11,14,25 289:20 290:1,5,7 291:9 295:12 296:21 297:3,13,14 300:11,12,18,22,23 301:7</p> <p><b>Commissioner's</b> [1] 217:12</p> <p><b>commissioners</b> [1] 158:2</p> <p><b>common</b> [3] 120:12 151:21,22</p> <p><b>communicate</b> [2] 71:17 228:14</p> <p><b>communicated</b> [4] 40:6 43:12 53:15,21</p> <p><b>communicating</b> [4] 43:13 44:7 45:11 70:13</p> <p><b>communication</b> [7] 17:2 38:18 63:21 70:23 134:25 135:3,4</p> <p><b>communications</b> [32] 13:6,10 39:14,21 45:21 62:20 63:13 64:1,6 65:15 65:19,20,25 66:11,15,17 67:6,9 69:9,12,15,17 70:5 71:4,14,17 87:8 103:18,19 104:1,3 124:19</p> <p><b>Community</b> [25] 5:20 6:5 9:6 11:17 14:19 24:7 35:14 60:22 61:6 79:10 79:20 80:21 82:9 88:22 89:25 91:14 111:9 113:23 135:16 137:17 140:7 143:5 159:20 160:22 288:18</p> <p><b>company</b> [1] 78:19</p> <p><b>compare</b> [1] 145:7</p> <p><b>compared</b> [1] 149:4</p> <p><b>compensation</b> [4] 175:24 179:17 183:6 230:2</p>
---	--	---	---	---



<p><b>competitive</b> [5] 179:18 228:23 230:3,4,5 <b>complete</b> [3] 32:24 41:4 215:18 <b>completed</b> [7] 42:10 54:14 57:3 116:11 136:23 266:14 298:7 <b>completely</b> [5] 28:21 96:23 178:2,6 185:10 <b>completing</b> [1] 54:5 <b>completion</b> [1] 57:10 <b>complex</b> [1] 121:4 <b>complexities</b> [1] 35:6 <b>complexity</b> [3] 107:4,6 121:6 <b>complied</b> [1] 98:4 <b>comply</b> [1] 99:2 <b>comprised</b> [1] 44:24 <b>computer</b> [1] 236:16 <b>concept</b> [1] 65:23 <b>concern</b> [20] 20:2 32:24 33:5 45:23 56:1,1 70:10 71:16,19 96:15 137:1,9 156:10,12 157:6 182:1 205:2 216:1 225:25 257:18 <b>concerned</b> [3] 71:23 116:8 225:9 <b>concerns</b> [9] 16:25 31:9 33:21 55:18 84:9 183:1 198:7 225:13 259:1 <b>concluded</b> [1] 193:11 <b>concludes</b> [1] 293:13 <b>conclusion</b> [7] 112:22 113:2 168:9 192:23 226:12 263:21 300:25 <b>conclusions</b> [2] 271:23 276:20 <b>concur</b> [1] 49:20 <b>conduct</b> [1] 61:7 <b>conducted</b> [3] 187:2 263:19 280:12 <b>conducting</b> [1] 57:11 <b>conference</b> [1] 31:25 <b>confidence</b> [17] 65:5 66:24 84:4 98:14 100:17 101:24 110:10 204:24 223:14 225:24 226:3,6 226:23,25 227:3 279:8 279:15 <b>Confidential</b> [1] 61:24 <b>confirmed</b> [4] 47:24 246:14 255:1 279:13 <b>conflict</b> [3] 18:4 21:10 21:25 <b>confrontational</b> [1] 164:3 <b>confusion</b> [1] 112:13 <b>conjunction</b> [1] 20:1 <b>connection</b> [1] 205:11 <b>consequences</b> [1] 179:1 <b>Conservation</b> [4] 79:7 88:21 89:18 131:14 <b>considerable</b> [2] 101:23</p>	<p>194:23 <b>considerably</b> [1] 178:13 <b>consideration</b> [1] 22:1 <b>Considerations</b> [1] 66:20 <b>considered</b> [11] 21:6,9 21:17 58:6 170:2 226:18 228:1 247:25 254:21 255:25,25 <b>consistent</b> [1] 124:6 <b>consolation</b> [1] 278:11 <b>constituent</b> [1] 109:13 <b>consultant</b> [6] 141:7 178:17 210:25 221:15,20 277:14 <b>consultant's</b> [1] 221:18 <b>consultants</b> [29] 53:22 57:11 137:23,24 138:16 149:11,23,24 150:8 154:24 155:8,23 176:24 185:9 193:8,25 197:4 208:18,25 212:13 214:15 219:4 221:24 226:16 277:5,11 298:1,14 299:25 <b>consultants'</b> [3] 55:23 138:4 156:2 <b>contact</b> [17] 12:19,22 26:14,20,21 27:2 28:24 44:1 47:16 104:11 157:22 157:23 229:20 263:25 265:24 266:17 296:19 <b>contacted</b> [12] 91:22 92:4 110:16 145:10 157:5 157:10,18 207:22 208:2 208:5,10 230:21 <b>contacting</b> [1] 266:10 <b>contacts</b> [1] 157:21 <b>contained</b> [6] 82:10 112:5 123:23 139:14 146:5,10 <b>contents</b> [6] 2:1 56:18 125:21 167:11 185:16 273:15 <b>context</b> [28] 38:15 39:1 39:5 40:19 41:2 56:11 56:13,16,20,22 57:8 90:18 96:20 99:19 121:11 124:14 131:25 134:21 135:13 169:13 195:6 198:3,6 213:24 216:13 257:15 283:7 291:20 <b>continuation</b> [1] 83:7 <b>continue</b> [3] 179:24 181:11 298:7 <b>continuing</b> [2] 99:7 180:2 <b>contradicted</b> [1] 299:9 <b>contradistinction</b> [1] 37:25 <b>contrary</b> [1] 32:16 <b>contributing</b> [1] 35:8 <b>contribution</b> [1] 76:23 <b>contributors</b> [1] 288:3 <b>control</b> [5] 15:1 272:5 273:8 274:8 276:3 <b>controls</b> [5] 16:19 123:1</p>	<p>272:6,23,25 <b>convenience</b> [1] 231:15 <b>convenient</b> [1] 300:13 <b>conversant</b> [1] 276:6 <b>conversation</b> [2] 86:23 87:2 <b>conversations</b> [1] 48:18 <b>converters</b> [7] 245:6 253:20 254:13 255:7 256:4,10 258:13 <b>convey</b> [1] 179:11 <b>Cook</b> [3] 177:5 179:9 181:8 <b>cooperative</b> [1] 5:15 <b>copied</b> [2] 27:21 288:21 <b>copies</b> [2] 123:4 210:20 <b>copy</b> [22] 62:6,7 143:16 144:8,17,25 145:2,14,15 145:19 147:18 202:3 217:7,7 239:7 240:1,2,4 270:13 288:19 293:4 297:20 <b>cordial</b> [1] 11:10 <b>corporate</b> [3] 93:8,11 105:13 <b>correct</b> [74] 4:25 7:24 8:3 14:4,4 18:8,13,20 24:21 45:1,5 50:7,19 51:13,18 60:6 75:17 79:23 91:9 92:14,24 93:21 94:6 116:14,19 119:6 124:4 128:3 132:19 139:1 141:9 144:19 146:2 154:4 156:5 158:12,19 165:3 167:8 169:12 173:22 174:13,19 179:5 183:3 194:6 195:10 196:3 201:17,25 206:8 207:10 212:10 222:20 234:20 236:2 239:19 240:12 246:8 249:1 251:6 256:23 257:4 263:14 282:3 285:6 290:15 291:6 293:22 296:3 297:13 299:5,22 301:3 <b>corrected</b> [2] 252:8,12 <b>correctly</b> [4] 157:3 158:10 162:23 287:8 <b>correspond</b> [1] 69:15 <b>correspondence</b> [9] 15:12,21 17:10 28:3 37:10 161:15 163:17,25 182:4 <b>Council</b> [4] 61:25 289:6 289:14 297:19 <b>counsel</b> [2] 37:21 159:17 <b>counterparts</b> [1] 223:12 <b>country</b> [7] 182:23,25 198:22 223:11 224:22 226:10 230:5 <b>couple</b> [10] 23:14 58:2 69:4 136:5 139:22 186:10 197:19 209:6 216:17 271:22 <b>course</b> [20] 12:4 17:9 20:13 27:14 37:24 39:4 39:17 41:22 43:4 45:14 55:21 83:18 94:23 96:5</p>	<p>107:19 124:12 127:13 189:13 215:6 259:18 <b>courses</b> [1] 115:17 <b>court</b> [7] 56:17,17 57:6 112:7 152:7 222:14 286:21 <b>courts</b> [3] 205:14,15 259:17 <b>cover</b> [1] 210:22 <b>coverage</b> [4] 65:4 66:11 103:13,15 <b>covered</b> [3] 217:13 281:11,18 <b>covering</b> [2] 177:3 179:8 <b>crack</b> [1] 4:9 <b>Crawley</b> [3] 92:5 94:2 288:21 <b>created</b> [2] 287:10 299:19 <b>creates</b> [1] 272:11 <b>credentials</b> [1] 165:22 <b>crisis</b> [3] 227:12 228:1 228:18 <b>critic</b> [4] 79:1,3 80:16,18 <b>critical</b> [4] 20:25 38:14 228:18 229:9 <b>cross</b> [7] 32:20 180:20 181:3 184:5,13 196:15 197:2 <b>cross-examination</b> [3] 27:15 281:12,19 <b>crossed</b> [1] 21:19 <b>crowd</b> [1] 97:21 <b>crucial</b> [1] 229:7 <b>CT</b> [1] 52:19 <b>current</b> [8] 9:3 115:15 186:21 228:15 278:19,20 279:7 285:9 <b>curve</b> [2] 81:24 132:1 <b>cytoplasmic</b> [1] 272:14</p>	<p>268:2 288:20 289:7 292:25 301:11 <b>dates</b> [1] 260:13 <b>dating</b> [2] 113:4 225:4 <b>Dawe</b> [12] 15:14 27:21 36:10 37:5 74:5 95:4 223:6,20 224:5,15,19 225:5 <b>Dawe's</b> [4] 156:20 223:16 224:3,10 <b>day-to-day</b> [2] 41:23 73:11 <b>days</b> [14] 6:9 15:15 24:19 33:25 59:2 80:8 83:8 99:14 108:22 112:1 159:16 163:18 238:13 296:14 <b>DCIS</b> [15] 245:5,13,25 246:1,6,12,14,18 247:17 249:5 250:18,21 252:11 252:23 253:11 <b>de</b> [1] 105:2 <b>dead</b> [1] 264:13 <b>deal</b> [9] 10:22 75:2 97:1 101:14 115:12 135:16 136:9 139:22 257:22 <b>dealing</b> [14] 9:18 21:21 45:22 70:10 93:19 109:24 110:2 141:1 144:3 159:1 160:6 177:22 182:13 221:18 <b>dealings</b> [5] 73:20 90:21 90:24 91:2 237:25 <b>deals</b> [4] 43:3 59:8 62:2 119:2 <b>dealt</b> [4] 106:24 151:11 155:19 179:22 <b>debate</b> [1] 282:5 <b>Debbie</b> [5] 140:17 141:5 146:8,19 150:18 <b>debriefing</b> [1] 83:20 <b>deceased</b> [14] 245:9 263:17,18,23 264:3,10 264:19 265:4,8,15,23 266:2,10,16 <b>December</b> [3] 187:20 225:5 261:14 <b>decide</b> [2] 124:1 128:24 <b>decision</b> [12] 18:5,6,10 30:4,6 42:3,4 49:20 66:13 67:16 68:9 205:16 <b>decisions</b> [2] 34:25 35:2 <b>decline</b> [1] 222:17 <b>decrease</b> [1] 229:8 <b>deeply</b> [1] 139:21 <b>Defense</b> [1] 223:6 <b>defined</b> [1] 73:8 <b>defining</b> [1] 15:16 <b>definition</b> [5] 129:25 130:2 254:16,21 255:21 <b>degree</b> [4] 93:15 133:13 165:19 175:24 <b>delete</b> [1] 4:10 <b>delivery</b> [1] 15:24 <b>demanding</b> [1] 89:13</p>
---	---	---	--	--

**-D-**

**D** [1] 177:8  
**daily** [1] 198:5  
**DAKO** [12] 148:7 199:12  
200:18 203:1,2,4,4  
206:16 271:2,24 272:1,8  
**Daniel** [1] 1:11  
**Darrell** [28] 90:9,11,14  
90:18,20,22 91:2,23 92:2  
92:3,8,9 93:1,1,3 104:14  
104:22 105:13,14,20  
106:2 202:16 232:17,25  
267:25 268:19 269:2  
295:3  
**date** [13] 29:20 44:20  
67:24 78:23 111:21 113:4  
116:9 140:9,16 159:5  
221:9 227:10 286:18  
**dated** [21] 24:2 62:9  
111:19 113:24 123:15  
138:8 148:21 150:19  
159:7,21 160:19 161:15  
177:4 215:7 227:6 234:2

<p><b>demands</b> [1] 89:15  <b>Denic</b> [1] 227:15  <b>department</b> [179] 5:18                      5:19 6:11,21 7:1,5,19 8:9                      8:12 9:22 10:1 13:13,15                      15:1,23 16:23,24 17:12                      17:17 21:3 25:16 26:12                      37:3,8 38:19,25,25 39:14                      39:19 50:9,13,23 51:4                      51:10 57:4 60:13 69:11                      69:14 70:17,24,25 72:9                      72:12 74:21 75:7 79:17                      80:20 81:14 82:2,3,4                      83:14 84:4,7 85:5 87:9                      87:17 88:17,20,22 89:24                      90:7 91:13,17 93:6,13                      93:14 95:23 96:1,19,23                      97:2,7,11,14,15,16,23                      101:9 102:11 103:10                      104:15 106:1,5 107:11                      107:13,17 108:20 109:5                      109:7,23 111:8 113:23                      114:8 117:7 120:9 124:22                      124:24 129:18 130:5                      131:13,14,15,15 132:16                      133:1,7,14 134:13,13                      135:7,15 136:7 137:16                      140:6 143:18 144:14                      145:18 148:23 151:11,17                      158:17 159:19 160:5                      162:25 163:8,16 165:20                      174:11 177:10 179:19                      181:22 182:9 186:1                      189:10 192:5 194:25                      195:2 198:4 202:15                      211:18 214:10 215:12                      224:16 230:11,16,19,20                      230:21 235:15 238:3                      239:6 240:1,6,6 250:20                      256:15 259:20 262:22                      267:15 270:2 286:2                      287:11,12,17,20,21,25                      288:17 289:9,10 290:13                      290:23 294:7,13 295:5,6                      296:24 298:16  <b>department's</b> [8] 18:10                      29:22 72:21 128:16 129:7                      129:15 144:15 151:16  <b>departmental</b> [1] 107:1  <b>departments</b> [2] 73:4                      125:15  <b>depending</b> [2] 8:7 29:19  <b>Deputies</b> [1] 73:17  <b>deputy</b> [36] 6:1,5 7:3                      8:17 12:20,22 20:1 37:6                      39:12,20 40:18 41:7 72:4                      72:4,15,22,23 74:1 85:12                      85:24,25 86:15 97:5,8                      102:24 124:14 165:7,9                      165:10 185:15 190:5                      202:9,10 230:19 287:16                      297:8  <b>describe</b> [2] 65:19 131:4  <b>described</b> [6] 9:3 13:23                      31:8 73:12 111:8 131:23  <b>describes</b> [1] 246:1  <b>descriptive</b> [1] 73:9  <b>designate</b> [1] 76:7  <b>designated</b> [3] 85:15</p>	<p>226:19,21  <b>desire</b> [1] 91:21  <b>despite</b> [1] 294:6  <b>detail</b> [4] 16:14 125:4,5                      175:20  <b>details</b> [4] 41:25 134:15                      155:3 269:8  <b>detection</b> [1] 272:4  <b>deterioration</b> [2] 179:23                      181:10  <b>determination</b> [2] 51:21                      100:6  <b>determine</b> [6] 96:5                      120:19 127:6 128:17,18                      131:24  <b>determined</b> [2] 203:23                      204:19  <b>develop</b> [1] 130:5  <b>development</b> [1] 127:7  <b>device</b> [1] 236:14  <b>diagnosed</b> [5] 246:5,11                      246:25 247:23 250:3  <b>diagnosis</b> [1] 246:2  <b>difference</b> [4] 115:13                      220:24 221:3 259:19  <b>differences</b> [1] 115:1  <b>different</b> [12] 29:3 31:4                      96:24 98:20 99:22 162:19                      178:7,14 185:10 289:21                      289:22 290:6  <b>differently</b> [2] 73:4                      123:17  <b>difficult</b> [9] 5:8 9:23                      33:16 34:20 41:25 101:4                      156:21 204:21 216:10  <b>difficulties</b> [1] 32:22  <b>diligent</b> [1] 278:2  <b>diminish</b> [1] 248:14  <b>Diponkar</b> [2] 159:22                      160:24  <b>direct</b> [9] 34:25 41:5 70:7                      70:8 106:25 117:12                      121:18 130:8 152:15  <b>directed</b> [1] 192:20  <b>direction</b> [5] 13:8 29:13                      101:3,15 294:6  <b>directly</b> [5] 35:20 109:7                      120:3 162:11,13  <b>director</b> [16] 39:21 69:8                      69:11,14 70:4 71:4,10                      71:10,14 87:8 103:18                      124:19 161:4 162:14                      177:9 234:2  <b>Directors</b> [3] 76:1 104:2                      104:3  <b>disagreeable</b> [1] 102:16  <b>disagreed</b> [1] 100:21  <b>disagreements</b> [1]                      101:1  <b>Discipline</b> [2] 227:9,14  <b>disclose</b> [2] 255:5 258:14  <b>disclosed</b> [1] 247:7  <b>disclosure</b> [9] 30:7 31:11                      31:14,24 32:15,23 43:4</p>	<p>46:9 286:20  <b>discovered</b> [10] 133:3                      137:21 169:24 193:23                      194:3 219:22 247:15                      249:4 280:13 286:20  <b>discoveries</b> [1] 178:16  <b>discovering</b> [1] 280:3  <b>discuss</b> [2] 29:19 69:15  <b>discussed</b> [2] 14:17 66:5  <b>discussing</b> [1] 135:6  <b>discussion</b> [15] 12:19                      28:25 30:3 32:12 36:23                      37:2,8 55:10 58:23 59:5                      62:19 83:23 85:14,22                      176:7  <b>discussions</b> [6] 22:8                      39:11,16,16 71:12 101:1  <b>disease</b> [3] 247:2,24                      248:1  <b>diseases</b> [1] 228:21  <b>disinterested</b> [2] 184:23                      184:24  <b>disparaging</b> [1] 237:2  <b>dissatisfaction</b> [1]                      263:7  <b>dissect</b> [1] 106:3  <b>distinction</b> [1] 114:21  <b>distinguish</b> [1] 156:21  <b>district</b> [1] 91:1  <b>districts</b> [2] 90:25,25  <b>division</b> [7] 1:16 6:22 8:7                      103:1,3 162:5,18  <b>DM</b> [4] 158:21 195:7                      291:16 292:14  <b>doctors</b> [3] 1:10 180:16                      257:6  <b>document</b> [12] 23:22                      24:2 27:16,19 31:24 43:5                      61:24 159:14 289:22                      291:8,11 297:22  <b>documentation</b> [3]                      182:15 225:3 261:16  <b>documents</b> [5] 4:11                      11:18 30:19 81:12 286:21  <b>doesn't</b> [8] 116:16                      127:14 135:4 142:15                      190:4 228:25 265:7                      289:13  <b>dollar</b> [2] 50:14,19  <b>dollars</b> [2] 52:2,3  <b>Donald</b> [1] 177:5  <b>done</b> [19] 29:25 41:17                      43:25 58:7 59:15 66:9                      99:22 116:14 132:18                      152:17 156:15 193:4,11                      198:23,24 226:2 274:11                      274:12 275:8  <b>door</b> [3] 179:22 181:9,12  <b>doors</b> [1] 99:13  <b>doubt</b> [2] 25:24 102:10  <b>Doucette</b> [5] 245:10                      259:12,22 261:5,15  <b>down</b> [20] 17:5 27:23                      31:11 55:17 56:3 62:5</p>	<p>83:8 111:13 139:20                      187:14 204:20,22,23                      210:13 217:18 245:7                      271:11 282:13 291:12                      292:2  <b>Doyle</b> [1] 90:21  <b>Dr</b> [44] 7:21 8:22 30:16                      159:22 160:24 162:18,21                      165:14 166:5 167:1                      168:22 171:5,15,22                      176:13 177:5,8 178:5                      179:9,11 180:21 181:8                      181:24 182:18 183:4                      185:8 186:5 188:23                      227:13,15,16 228:8,9,13                      229:20 231:9 271:12,12                      271:19 273:23 275:24                      276:20 277:1,13  <b>draft</b> [4] 31:1,23 163:6                      292:14  <b>drafted</b> [11] 31:2,4,5                      161:24 163:7 168:13,14                      168:19 171:21 174:19,21  <b>drafter</b> [1] 138:6  <b>drafters</b> [1] 299:19  <b>drafts</b> [1] 128:6  <b>drug</b> [5] 64:15 66:8 67:12                      116:4 219:17  <b>ductal</b> [2] 245:4 273:4  <b>due</b> [4] 55:21 151:3,20                      272:2  <b>during</b> [23] 4:21 6:8,25                      8:9,15 9:5 10:4,21 12:3                      14:14,18,22 27:14 48:17                      78:24 151:11 155:17                      156:7 182:4 198:20                      215:12 273:11 293:20</p>	<p>85:2 86:10 94:17 95:5                      95:11 96:20 97:11,12,22                      98:3,7 106:19 107:3,12                      108:21 109:2,6,24 110:10                      112:6 117:1 121:3 133:2                      133:8,15 134:6,14,22,23                      135:8 136:7,8 137:21,25                      138:2,7,13,14,17 149:11                      149:24 150:23 152:3                      155:1 157:5,8 172:7                      176:24 177:13 194:7,17                      198:19,23 199:17 200:9                      200:10,12,15 204:4,24                      208:19 209:6 216:4,5                      222:13,17 223:5,8,13                      225:9 226:2,7,24 227:1                      230:11 233:23 235:7                      241:22 247:6,21 250:20                      255:3 256:15 257:22,23                      258:11 259:15 260:5,9                      260:14,18 261:1,14                      262:11 263:8,25 265:24                      266:18 274:15 276:13                      278:21,24 279:2,6,9,19                      280:10 283:15 285:1                      286:21 287:15 290:12,22                      297:25  <b>easy</b> [1] 40:24  <b>economy</b> [1] 173:24  <b>Ed</b> [2] 161:7 162:4  <b>edging</b> [1] 28:10  <b>educated</b> [2] 78:12 276:1  <b>education</b> [3] 180:2                      273:5 274:5  <b>effect</b> [3] 36:24 189:25                      211:23  <b>effective</b> [1] 64:15  <b>effectively</b> [10] 45:7                      82:23 88:18 128:7,7                      131:6 178:21 180:4                      195:22 210:20  <b>effects</b> [3] 168:3 169:21                      172:16  <b>efficient</b> [2] 103:18,25  <b>effort</b> [2] 68:11 145:20  <b>efforts</b> [1] 230:10  <b>EH</b> [1] 161:7  <b>eight</b> [3] 113:20 115:24                      127:3  <b>either</b> [14] 39:22 154:11                      157:8 183:25 197:2                      199:17 237:21 240:20                      250:3,20 252:18 255:14                      265:13 296:20  <b>elected</b> [1] 78:21  <b>electronically</b> [2]                      103:16,19  <b>eleven</b> [1] 126:5  <b>Elizabeth</b> [2] 80:1,6  <b>elsewhere</b> [3] 123:25                      169:3 179:21  <b>embarked</b> [1] 219:13  <b>employed</b> [1] 24:6  <b>employee</b> [3] 92:3,4                      241:21  <b>employment</b> [1] 89:13</p>
---	---	---	---	--

-E-

**E** [1] 288:22  
**e-mail** [16] 24:11 27:20  
 233:16 234:6 243:12  
 244:18 250:14 251:13  
 252:1,4 265:6 267:5,18  
 278:15 291:13 292:24  
**e-mails** [4] 24:8 236:15  
 237:1 239:25  
**E-W-E-N** [1] 87:24  
**EA** [2] 94:7 104:7  
**eagerly** [1] 54:14  
**ear** [1] 202:9  
**early** [22] 32:23 43:11  
 66:8 77:5,10,15 108:21  
 109:8 119:1 121:11,13  
 121:13,16 135:14,14  
 137:25 138:7 149:25  
 154:12 208:19 231:7  
 268:7  
**easier** [1] 269:7  
**easily** [1] 211:25  
**Eastern** [143] 1:11 12:13  
 13:14,18,24 14:6 18:15  
 21:8 22:8,22,23 23:7  
 29:17 32:13 33:14 36:11  
 37:4 39:15 43:19 44:18  
 49:14 50:4 51:9,15,20  
 51:24 73:20 75:23 76:1

<p><b>encourage</b> [1] 229:10  <b>end</b> [14] 17:5 18:3,15  41:11 64:15 99:9 100:3  100:8 123:14 165:12  190:1 245:12 258:9 265:7  <b>endeavour</b> [2] 80:25  156:23  <b>endeavouring</b> [1]  117:17  <b>ended</b> [4] 78:6 91:7 212:8  269:22  <b>ends</b> [1] 65:2  <b>engaged</b> [1] 298:1  <b>engagements</b> [1] 9:22  <b>ensure</b> [10] 99:12 108:11  145:8 208:4 226:9 229:13  240:21 257:18 259:3  295:4  <b>enter</b> [3] 94:11 122:15  191:10  <b>entered</b> [10] 89:15  110:21 121:23 122:3,17  190:22 191:4,7,11 205:9  <b>entering</b> [1] 78:18  <b>enthusiastic</b> [1] 68:9  <b>entire</b> [6] 8:15 82:6 90:5  90:6 137:15 180:3  <b>entirely</b> [4] 125:9 142:4  142:17 262:2  <b>entirety</b> [5] 54:6 56:25  61:18 169:14 197:6  <b>entitled</b> [1] 288:17  <b>entry</b> [1] 79:18  <b>environment</b> [7] 64:7  79:5,7 88:20 89:17  105:19 131:14  <b>epithellium</b> [1] 273:4  <b>equally</b> [1] 83:10  <b>ER</b> [7] 152:19 254:14,17  254:20 266:5 275:12,19  <b>ER/PR</b> [63] 9:11 13:21  24:13 26:15 37:24 53:7  55:17 57:18,25 58:3  62:17 65:5 66:23 71:22  73:4,15 84:14 85:9,16  85:20 106:7,11 116:1  119:2 132:12 133:6 134:1  137:22 139:5 141:1 148:7  154:20 170:10 186:20  190:3 195:16 200:12  219:20 220:1 232:23  233:7,19,24 235:6 238:17  245:22 246:15,18 248:24  250:2 254:25 263:22  266:4 268:4,9 269:3  274:11 276:5 278:20  280:11 291:16 293:2,8  <b>erroneous</b> [1] 297:24  <b>error</b> [34] 192:18,18,21  192:22 195:3 196:17,19  196:21,21,22,25 198:17  198:21 199:1,3,11 201:14  201:14 202:25 203:2,24  204:3,20,22 205:6,13,24  206:5,16 224:25 225:10  247:16 260:24 270:1  <b>errors</b> [9] 169:22 176:2</p>	<p>183:14 189:7 196:16  205:3 225:10 252:6 253:7  <b>escaped</b> [1] 294:8  <b>especially</b> [4] 116:25  135:12 228:21 229:7  <b>essence</b> [1] 272:8  <b>essential</b> [1] 228:19  <b>essentially</b> [5] 13:20  36:16 74:22 94:6 106:18  <b>established</b> [2] 44:18  97:22  <b>estrogen</b> [5] 84:14 133:5  169:23 234:3 241:25  <b>et</b> [1] 1:10  <b>ethic</b> [1] 93:4  <b>ethics</b> [4] 263:19 266:8  266:12,20  <b>evening</b> [2] 144:20 164:6  <b>event</b> [3] 22:24 35:7  224:2  <b>events</b> [5] 20:8,9 34:20  57:5 219:17  <b>eventually</b> [2] 216:17  265:22  <b>evidence</b> [6] 36:12,13  203:6,21 213:10 272:11  <b>evolved</b> [1] 29:6  <b>evolving</b> [1] 30:9  <b>Ewen</b> [3] 87:20,24 89:2  <b>exact</b> [6] 41:25 86:9  117:13,21 162:12 286:18  <b>exactly</b> [10] 5:8 26:20  31:22 44:10 55:22 72:20  92:19 194:22 251:18  256:10  <b>examination</b> [8] 2:3,5  2:7 4:15 32:21 69:7  77:22 195:25  <b>examine</b> [1] 214:18  <b>example</b> [25] 7:4 8:8  10:2 12:20 15:16 20:3  39:2 48:19 52:19 69:18  69:19 70:25 71:21 72:23  76:11 99:15,24 101:8  102:23 121:10 146:6  157:11 168:2 169:20  203:3  <b>examples</b> [2] 126:23  219:15  <b>excellence</b> [1] 226:18  <b>except</b> [2] 76:1 290:2  <b>exception</b> [11] 165:21  168:20 176:1 180:14  181:21,22 182:20 183:4  183:13 229:24 235:17  <b>exceptions</b> [5] 232:13  232:20 242:4 245:3,3  <b>excerpts</b> [1] 123:7  <b>exchange</b> [1] 244:18  <b>exclusive</b> [1] 272:24  <b>excuse</b> [4] 112:9 122:2  250:18 278:8  <b>excused</b> [2] 58:2,6  <b>executive</b> [35] 16:23</p>	<p>41:23 61:25 69:13 71:12  85:13 87:18 88:9 91:4  91:19 97:16 102:21  103:10 104:7,8,12,13,18  105:11,16,17,21 131:13  151:16 195:2,6 211:18  268:14 270:2 279:1 289:6  289:14 295:4,9 297:19  <b>executive's</b> [2] 128:21  129:7  <b>exercise</b> [8] 14:13 15:2  29:22 41:4 42:10 45:15  54:14 103:11  <b>exercised</b> [1] 15:9  <b>exhibit</b> [52] 3:3 30:24  42:17,18,19 61:18 62:22  112:5 113:4 122:20  125:19 126:7 127:3 140:4  154:15 159:2 160:18  161:13,18 164:5 177:1  186:11 187:6 189:3  191:11 192:10 204:12  205:24 206:22,23 209:11  210:13,22 211:3 214:24  214:25 221:7 227:5 232:2  233:15 258:10 259:9  281:14 285:20,21 288:15  289:13,21 292:1,19,23  297:17  <b>exhibits</b> [14] 3:1,2 11:18  30:20 40:9 110:21 121:23  122:17 123:3,4 205:9  209:22 225:4 289:23  <b>existence</b> [1] 293:19  <b>exists</b> [2] 286:3,4  <b>expect</b> [7] 15:16 16:2  72:3 74:19 75:13 76:16  188:7  <b>expectation</b> [7] 15:22  56:24 57:1,4,8 76:20  89:5  <b>expectations</b> [1] 15:25  <b>expected</b> [4] 74:11 89:6  138:1 188:18  <b>expedient</b> [1] 99:12  <b>experience</b> [10] 5:16  11:25 23:6,12 80:16,24  86:7 88:16 93:18 151:5  <b>experienced</b> [4] 168:2  169:20 176:3 183:15  <b>expert</b> [2] 22:6 35:1  <b>experts</b> [1] 21:21  <b>explain</b> [9] 6:17 29:15  33:9 139:16 175:20,21  210:1 249:13 277:21  <b>explained</b> [12] 121:15  175:15 180:13 211:25  239:24 240:4 252:22,23  255:9,16 266:9 276:7  <b>explanation</b> [4] 151:24  175:13 277:23 278:1  <b>explicitly</b> [1] 130:18  <b>express</b> [1] 5:8  <b>expressed</b> [8] 23:19 28:6  32:9,10 33:2 156:11  240:23 273:24  <b>expressing</b> [2] 181:1</p>	<p>225:13  <b>extend</b> [1] 77:6  <b>extent</b> [1] 73:10  <b>external</b> [32] 53:22 57:10  59:14 137:23 154:23  176:23 177:6 178:16  185:9 186:24 187:7,9,18  187:23 193:7,14,24 194:8  195:19 208:25 212:13  214:15 218:24 219:4  221:18 226:16 272:24  277:5,11 298:1,14 299:25  <b>eye</b> [1] 149:18  <hr/> <p style="text-align: center;"><b>-F-</b></p> <hr/> <b>face</b> [2] 179:19 267:21  <b>fact</b> [92] 5:19 19:18,24  21:7,25 38:12 40:25 41:6  41:9,12 43:11 44:23  47:13,15,18,19,19 59:21  60:20 62:3,25 66:12,14  80:5 86:22 89:3 93:3,17  102:18 104:16 105:16  107:5 110:13 111:19  113:12 115:22 121:13  128:13 138:19 142:5,18  144:7 145:14 165:21  176:21 177:1,11 178:3,9  181:18,23 182:3,23 183:5  184:17 185:9 189:14  190:5 192:11,13,14,21  195:20 198:18 203:5,16  203:23 204:19 211:13  215:17 216:4 224:16  225:6 226:16 229:24  230:15 243:1 247:16,25  256:16,23 259:25 263:2  264:9 276:24 280:19,25  290:5 293:19 296:22  298:17 299:1  <b>facto</b> [1] 105:2  <b>factors</b> [1] 35:7  <b>facts</b> [1] 35:4  <b>factual</b> [1] 113:19  <b>Faculty</b> [1] 227:9  <b>fail</b> [1] 102:14  <b>failed</b> [1] 272:7  <b>failure</b> [2] 271:24 272:2  <b>fair</b> [18] 14:2 22:11,16  104:21 106:23 108:6  109:19 120:8 125:12  132:23,25 137:14 165:20  185:7 222:10 226:1,22  242:21  <b>fairly</b> [3] 11:21 45:14  194:25  <b>fairness</b> [4] 241:14 270:2  281:11,18  <b>fall</b> [5] 43:10 237:5 247:4  254:4 300:16  <b>falling</b> [1] 63:11  <b>false</b> [3] 173:23 272:7,11  <b>familiar</b> [3] 39:18 44:21  241:21  <b>families</b> [5] 34:13 35:19  109:19,22 263:20</p>	<p><b>family</b> [8] 7:4 86:25  150:24 223:5 266:1,10  266:11,16  <b>far</b> [7] 151:12,14 156:16  211:6 259:9 271:6 281:14  <b>fashion</b> [3] 99:22 164:15  175:4  <b>fast-moving</b> [1] 82:2  <b>faulty</b> [2] 271:24 272:8  <b>February</b> [10] 111:14  160:20,24 161:15,18  164:20 166:6 171:4  178:20 180:5  <b>federal</b> [2] 90:25 105:18  <b>felt</b> [12] 25:1 53:4 84:6  101:24 131:22 132:7  192:2 194:18 209:6 239:4  239:24 260:21  <b>few</b> [5] 4:18 18:23 33:25  99:13 296:14  <b>field</b> [1] 21:21  <b>fifteen</b> [3] 77:10,15  231:21  <b>fifth</b> [1] 186:23  <b>fifty</b> [1] 82:10  <b>figure</b> [5] 50:14,19,24  51:3 52:2  <b>file</b> [2] 163:15 276:12  <b>filed</b> [10] 112:7 223:4,5  225:3 261:7,12,16,19  285:21 297:19  <b>fill</b> [3] 91:21,24 182:24  <b>filled</b> [2] 92:6,9  <b>final</b> [17] 17:7,16,17,18  17:19,23 31:2 51:3 56:12  57:17 59:21 61:15 138:3  156:2 205:15 293:3,4  <b>finalize</b> [1] 57:13  <b>finally</b> [2] 203:23 204:19  <b>Finance</b> [1] 17:18  <b>finances</b> [1] 18:22  <b>financial</b> [3] 19:5 21:1  63:24  <b>finding</b> [3] 56:9 156:20  294:21  <b>findings</b> [4] 53:13  276:19 277:3 279:19  <b>fine</b> [5] 97:24 143:17  218:4 266:8 277:16  <b>finish</b> [1] 166:11  <b>first</b> [95] 4:9 26:15 31:13  41:11 58:15,20 59:7 64:8  71:2 78:21 80:5 82:6,19  82:22 87:17,22 95:18  97:1 100:11 106:11  107:10 110:19 111:10,11  114:2 129:14 132:16,22  132:24 135:22 136:3,3,5  139:21 141:20,23,23  142:5,6,8,15,16,18  146:16 147:21,25 148:3  148:22 149:9 156:1,7  161:13 166:4 175:19  179:16 180:4 181:7,23  186:22 190:1 192:19  193:21 194:4 201:8</p>
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Inquiry on Hormone Receptor Testing

<p>202:18 206:22 210:12 218:11 219:24 221:17 234:5 235:18,25 236:7 242:13 245:11,15,25 246:20 250:14 251:8,15 251:23 258:9 261:5 264:5 281:1,20,24 282:1 284:14 286:8 293:18 295:9 297:4</p> <p><b>five</b> [9] 6:12,18 7:1 11:20 12:3 59:2 111:16 221:7 237:12</p> <p><b>fix</b> [1] 198:8</p> <p><b>fixation</b> [3] 272:15,19 272:19</p> <p><b>Fixing</b> [1] 219:11</p> <p><b>focus</b> [6] 137:15 180:14 208:4 209:22 274:4 285:9</p> <p><b>focused</b> [2] 13:24 259:3</p> <p><b>focussed</b> [2] 181:20 190:2</p> <p><b>focussing</b> [1] 186:15</p> <p><b>follow</b> [4] 25:8 262:14 262:19 279:16</p> <p><b>follow-up</b> [4] 282:24 283:17,22 284:1</p> <p><b>followed</b> [1] 26:16</p> <p><b>following</b> [10] 31:10 65:3 78:16 119:20 173:12 179:14 233:21 240:18 253:19 260:6</p> <p><b>force</b> [1] 56:8</p> <p><b>forcefully</b> [1] 296:1</p> <p><b>foregoing</b> [1] 301:2</p> <p><b>foreign</b> [4] 165:23 169:4 180:14,18</p> <p><b>foreign-trained</b> [5] 165:15 167:2,24 168:6 168:25</p> <p><b>foremost</b> [2] 132:25 218:11</p> <p><b>foresee</b> [1] 32:22</p> <p><b>form</b> [3] 70:6 119:9 127:10</p> <p><b>format</b> [6] 116:14 119:16 120:10 125:9,24 126:1</p> <p><b>formatted</b> [1] 119:4</p> <p><b>former</b> [1] 72:2</p> <p><b>formerly</b> [1] 78:13</p> <p><b>forming</b> [1] 79:5</p> <p><b>forms</b> [1] 114:12</p> <p><b>forth</b> [5] 18:22 133:17 133:21 134:4 135:1</p> <p><b>forthcoming</b> [2] 203:6 269:21</p> <p><b>forty</b> [1] 67:14</p> <p><b>forward</b> [9] 10:4 62:4 62:11,24 233:20 234:23 235:3 240:18 278:18</p> <p><b>forwarded</b> [3] 15:12 235:14 278:21</p> <p><b>forwarding</b> [3] 278:18 291:16 292:13</p> <p><b>fought</b> [1] 213:20</p> <p><b>found</b> [5] 80:21 103:25</p>	<p>202:23 270:16 297:5</p> <p><b>four</b> [15] 11:20 12:2 14:21 15:13 24:19 111:11 111:12 171:1 186:23 187:15 205:23 210:20 254:23 256:5 258:13</p> <p><b>fourteen</b> [1] 14:21</p> <p><b>fourth</b> [3] 150:21 151:1 297:21</p> <p><b>framed</b> [1] 132:20</p> <p><b>frankly</b> [2] 150:6 213:15</p> <p><b>fraught</b> [1] 189:7</p> <p><b>Freedom</b> [1] 144:20</p> <p><b>frequent</b> [2] 12:18 39:12</p> <p><b>frequently</b> [1] 71:16</p> <p><b>fro</b> [2] 16:18,21</p> <p><b>front</b> [5] 10:9 111:3 122:22 123:1 215:2</p> <p><b>full</b> [10] 25:6,9 26:16 31:14,24 33:1 56:12 135:12 204:4 211:20</p> <p><b>fully</b> [4] 55:13 72:8 127:25 209:7</p> <p><b>function</b> [3] 10:2 104:8 114:8</p> <p><b>functions</b> [1] 105:10</p> <p><b>fund</b> [2] 62:3 63:2</p> <p><b>fundamentally</b> [1] 55:19</p> <p><b>funded</b> [3] 62:8 63:7 67:20</p> <p><b>funding</b> [1] 98:9</p> <p><b>future</b> [3] 229:15 255:5 258:14</p> <p><b>FYI</b> [2] 278:19 291:17</p> <hr/> <p style="text-align: center;"><b>-G-</b></p> <hr/> <p><b>G</b> [1] 288:23</p> <p><b>gage</b> [1] 260:5</p> <p><b>Galgay</b> [1] 90:1</p> <p><b>game</b> [1] 192:1</p> <p><b>Gary</b> [10] 233:21 234:12 234:14 235:4 237:24 240:18 243:18 290:17 293:11,14</p> <p><b>gather</b> [7] 43:4,7 52:21 79:15 166:24 202:24 203:5</p> <p><b>gathered</b> [1] 185:11</p> <p><b>gathering</b> [1] 29:22</p> <p><b>gauging</b> [1] 260:3</p> <p><b>gears</b> [1] 74:3</p> <p><b>general</b> [10] 53:13 85:22 126:2,3 217:20 218:5,8 219:19 266:15 272:6</p> <p><b>generally</b> [20] 12:8 96:16 98:4,11 104:20 105:18 105:25 114:12,14 115:3 115:11,16 120:24 149:19 163:7 175:9 218:9,12 232:15 294:25</p> <p><b>gentleman</b> [1] 177:22</p> <p><b>George</b> [15] 10:23 24:7</p>	<p>24:9 27:21 38:22 40:2 48:17,20 49:16 94:12,13 123:8 211:17,19 278:25</p> <p><b>Gerri</b> [1] 64:23</p> <p><b>given</b> [28] 21:11 22:24 23:7 35:17 44:3 65:3 66:22 82:4 102:10 108:1 108:3 123:4 163:15 166:25 185:10 192:25 195:15 196:6 208:24 215:19 224:24 250:19 251:4 256:14 260:10 262:17 264:17 284:18</p> <p><b>giving</b> [8] 13:8 110:14 120:21 135:7 143:21 188:19 257:2 282:15</p> <p><b>glad</b> [1] 34:15</p> <p><b>Globe</b> [1] 64:13</p> <p><b>goal</b> [1] 298:5</p> <p><b>goes</b> [17] 64:20 65:2 75:7 108:16 111:18 126:5 128:20 132:25 143:15 179:25 189:4 211:1 229:6 234:4 253:10 272:25 293:11</p> <p><b>gone</b> [15] 94:2 141:21 145:6 150:9 175:17 182:9 182:10 198:22 210:1 237:24 247:14 271:6 294:22,24 296:17</p> <p><b>good</b> [19] 4:4,4,7,17,17 5:6 31:21 77:25 78:2 84:5 92:3,4 99:6 100:16 101:24 106:2 223:8 224:19 226:2</p> <p><b>governance</b> [3] 14:23 95:24 97:10</p> <p><b>governed</b> [1] 98:12</p> <p><b>government</b> [31] 6:22 6:24 17:22 52:14 65:8 66:13 67:1 68:10 69:11 69:17 70:14,16 79:4,6 81:2 82:5 91:18 96:16 104:5 106:5,21 125:14 125:20 128:24 132:23 151:2,18 159:18 218:10 222:16 259:16</p> <p><b>government's</b> [4] 18:6 95:24 96:6 150:22</p> <p><b>graduating</b> [1] 182:24</p> <p><b>great</b> [12] 63:3 84:4 96:15 106:25 110:9 115:12 135:16 139:22 153:24 224:17,18 231:19</p> <p><b>greater</b> [9] 37:12 89:16 120:24 125:3,5 170:10 170:21 184:17 200:1</p> <p><b>greeted</b> [1] 63:3</p> <p><b>Griffiths</b> [1] 24:7</p> <p><b>grossing</b> [1] 272:17</p> <p><b>group</b> [4] 11:21 162:17 213:4 254:19</p> <p><b>guard</b> [1] 132:2</p> <p><b>guess</b> [32] 7:16 8:8 15:11 16:2 17:22 20:13 23:18 24:10 28:3,7 29:20 32:13 36:9 37:13 66:1 70:9</p>	<p>73:20 78:20 83:6 86:16 89:5 95:23 96:1 97:5,15 120:12 124:21 160:11 161:10 167:22 208:2 226:5</p> <p><b>guided</b> [2] 22:7 35:3</p> <p><b>guideline</b> [3] 39:7 126:13 127:4</p> <p><b>guidelines</b> [4] 125:21 126:5 127:1 129:13</p> <p><b>guys</b> [1] 98:16</p> <hr/> <p style="text-align: center;"><b>-H-</b></p> <hr/> <p><b>half</b> [7] 47:1,2 57:9 78:25 79:8 82:5 86:16</p> <p><b>hand</b> [13] 31:16 147:4 208:13 217:20,20 219:10 219:19 220:14 221:16,25 222:4 288:18 299:20</p> <p><b>handle</b> [1] 107:21</p> <p><b>handled</b> [1] 106:4</p> <p><b>handling</b> [1] 108:5</p> <p><b>handwriting</b> [3] 206:4 206:24 207:7</p> <p><b>handwritten</b> [5] 30:17 207:20 217:9 218:17 252:18</p> <p><b>hang</b> [1] 98:16</p> <p><b>Hanlon</b> [5] 150:25 245:10 259:11,22 261:13</p> <p><b>Hanlon's</b> [1] 223:5</p> <p><b>happening</b> [3] 105:25 260:5 297:10</p> <p><b>happy</b> [1] 110:5</p> <p><b>hard</b> [1] 116:6</p> <p><b>hardly</b> [2] 164:25 267:1</p> <p><b>Harking</b> [1] 72:2</p> <p><b>hate</b> [1] 69:2</p> <p><b>HCS</b> [1] 290:13</p> <p><b>heading</b> [7] 119:20 245:8 245:9 246:1,23 259:10 263:17</p> <p><b>headings</b> [2] 245:4 259:9</p> <p><b>heads</b> [1] 73:17</p> <p><b>health</b> [24] 1:12,18 5:16 5:20,23 6:4 7:17 9:6 11:14,16,25 12:13,15 13:14,18,24 14:1,6,18 14:19,20 15:3,13,23 16:16 17:24 18:15,16 21:8 22:9,22,23 23:7 24:6 29:17 32:14 33:21 35:14 36:11 37:4,7 38:10 38:14 39:15 41:24 43:19 44:18 49:14 50:4 51:15 51:20,25 60:22 61:6 66:25 73:20 75:7,22,24 76:2,10 78:7 79:9,17,19 80:14,16,18,20,25 81:7 81:12,14,17 82:8 83:19 84:12 85:3,5 86:11,11 86:14,15 87:9 88:22 89:8 89:11,15,16,20,24 90:6 90:14 91:13 94:17,18 95:5,12,21 96:21 97:11 97:12,23 98:3,7 106:19</p>	<p>107:3,12 108:21 109:2,6 109:24 110:10 111:9 112:7 113:23 117:1 118:24 120:14 121:4,14 121:17 131:15 132:22 133:2,8,15 134:6,14,22 134:24 135:8,15 136:8 137:16,21,25 138:2,7,13 138:15,17 140:7,19,20 141:7 143:5 149:12,24 150:24 152:3 155:1 156:8 157:5,8 159:20 160:22 172:7 176:24 177:13 192:6,24 194:7,18,25 195:2 198:19,23 199:18 200:9,10,12,15,22 204:4 204:24 208:19 209:7 211:19 215:9 216:4,5 218:10 219:12,13,25 222:13,17 223:8,13 225:9 226:2,7,24 227:1 228:19 229:12 230:9,11 233:23 235:7 241:22 247:6,22 250:21 255:3 256:15 257:23,24 258:11 259:15 260:6,10,14,18 261:1,14 262:12 263:8,25 265:25 266:18 274:15 276:13 278:22,24 279:2,6,9,19 280:10 283:15 285:2 286:2,21 287:15 288:17 290:12,22 293:24 298:1</p> <p><b>Health's</b> [5] 33:14 51:9 51:10 74:22 136:8</p> <p><b>hear</b> [2] 74:19 75:13</p> <p><b>heard</b> [6] 7:8,12,21 240:16 288:8 301:5</p> <p><b>hearing</b> [1] 251:8</p> <p><b>hearings</b> [1] 144:14</p> <p><b>Hearn</b> [1] 90:23</p> <p><b>heart</b> [1] 219:17</p> <p><b>Heather</b> [5] 234:1 241:18,18 290:11 293:6</p> <p><b>heavily</b> [3] 104:22 167:23 168:25</p> <p><b>heck</b> [1] 121:12</p> <p><b>held</b> [1] 141:9</p> <p><b>help</b> [3] 63:2 127:5 260:4</p> <p><b>helpful</b> [3] 5:24 66:8 130:13</p> <p><b>Hennebury</b> [1] 1:10</p> <p><b>Hennessey</b> [27] 7:15 8:16 40:16 41:14 54:23 73:22 86:1,19 101:20 140:18,19 141:8 146:8 146:20 150:19 195:7 197:3 199:22 212:22 232:6 290:12,22 291:14 292:13,25 294:5 296:11</p> <p><b>Hennessey</b> [1] 278:16</p> <p><b>Herceptin</b> [1] 62:3,8 62:16,25 63:2,8 64:8,14 65:10 67:20 68:16</p> <p><b>hereby</b> [1] 301:2</p> <p><b>herself</b> [4] 71:5 210:24 240:19,21</p> <p><b>Hi</b> [1] 293:3</p> <p><b>high</b> [5] 168:3 169:21</p>
---	---	--	---	---

<p>172:13 179:15 183:16 <b>high-quality</b> [5] 172:16 173:6,21,25 176:4 <b>higher</b> [1] 183:6 <b>highly</b> [2] 21:23 228:24 <b>himself</b> [2] 71:5 228:14 <b>hindsight</b> [1] 277:19 <b>hire</b> [1] 260:22 <b>Historically</b> [2] 167:23 168:24 <b>history</b> [5] 6:2 11:13 73:5 231:5 291:8 <b>home</b> [2] 82:11,22 <b>homework</b> [1] 82:23 <b>honest</b> [2] 178:2 243:9 <b>honestly</b> [1] 270:20 <b>honour</b> [1] 35:17 <b>Honourable</b> [6] 1:4 79:25 80:1 160:21 268:3 301:6 <b>hope</b> [2] 35:10 229:7 <b>hopes</b> [1] 223:8 <b>hormonal</b> [1] 254:22 <b>hormone</b> [3] 1:3 64:19 301:4 <b>Hospitals</b> [1] 36:20 <b>hours</b> [4] 89:4,6 101:23 105:9 <b>house</b> [33] 9:19 25:10 51:5 70:2 78:21 81:4,5 82:7,18 83:3,6,9 91:14 93:7 102:19,23 103:2,6 103:7 108:2 109:10 114:15 117:6 126:16 138:23 139:19 143:2 148:24 151:25 154:8,19 205:19 224:2 <b>huge</b> [2] 139:10 198:4 <b>human</b> [2] 80:24 196:22 <b>hundreds</b> [1] 169:24 <b>Hunt</b> [7] 7:21 8:22 161:7 162:4,18,18,21 <b>Hynes</b> [12] 90:9,14 104:14,22,25 202:16 232:17,25 233:6 267:25 295:3 297:9</p>	<p><b>identify</b> [4] 38:23 55:24 117:2 217:16 <b>IHC</b> [10] 273:7,8 274:7,9 275:17,17,20 276:2,4,5 <b>II</b> [1] 63:21 <b>immediate</b> [2] 20:4,5 <b>immediately</b> [6] 20:2 67:15 137:20 148:13 193:22 194:3 <b>immunohistochemical</b> [2] 275:18 276:2 <b>immunohistochemistry</b> [2] 177:7 210:19 <b>impact</b> [1] 109:22 <b>impacted</b> [4] 32:1 35:20 152:20 293:7 <b>implement</b> [1] 219:14 <b>implementation</b> [1] 196:11 <b>implemented</b> [15] 128:25 137:24 138:16,19 149:23 154:25 195:23 196:9 208:18 209:8 214:20 298:5,19 299:3 300:7 <b>importance</b> [5] 223:13 229:11 273:7 274:8 276:3 <b>important</b> [13] 14:22 25:1,17 29:24 34:14 55:20 63:4 65:8 66:5,9 66:14,25 67:11 <b>importantly</b> [1] 110:13 <b>impossible</b> [1] 27:6 <b>impression</b> [2] 167:6 284:4 <b>improved</b> [1] 219:17 <b>improvements</b> [3] 108:11 110:12 198:9 <b>inability</b> [2] 228:23 260:12 <b>inaccurate</b> [2] 64:18 281:9 <b>inadequate</b> [2] 272:16 272:21 <b>inadvertently</b> [1] 205:7 <b>inappropriate</b> [3] 239:25 272:23 273:3 <b>incessantly</b> [1] 237:3 <b>include</b> [4] 127:11,15,18 265:15 <b>included</b> [9] 15:21 17:6 64:5 81:7 187:16 254:15 259:24 260:1 265:4 <b>includes</b> [1] 191:1 <b>including</b> [6] 15:20 79:1 97:16 182:9 230:16 272:3 <b>inconsistencies</b> [2] 280:3,13 <b>incorrect</b> [1] 257:5 <b>incorrectly</b> [3] 246:25 247:23 250:3 <b>increase</b> [3] 229:8 230:12,24 <b>indeed</b> [1] 150:9</p>	<p><b>Independent</b> [4] 233:24 243:7 261:18 267:19 <b>indicate</b> [4] 162:4 167:10 261:17 292:13 <b>indicated</b> [19] 41:12,21 43:9 84:3 89:2,3,10,11 92:5 109:4 112:20 181:25 199:16 200:17 203:10 239:4 259:15 277:18 293:9 <b>indicates</b> [2] 79:19 265:18 <b>indicating</b> [1] 165:15 <b>indication</b> [10] 17:10 192:25 206:14 240:16 242:13 246:20 262:16 263:6 264:5,6 <b>indirectly</b> [1] 65:22 <b>individual</b> [16] 33:20 45:19,23 46:10 82:24 160:5 163:8 176:22 178:4 184:1,17 239:8,15 242:4 244:24 248:17 <b>individually</b> [3] 155:23 283:1,19 <b>individuals</b> [19] 8:11 21:24 22:2,12,21 67:12 84:3,5,25 95:18 195:14 213:25 236:25 249:25 257:18 258:6 260:3,8 283:4 <b>Industry</b> [1] 79:3 <b>inform</b> [5] 130:17 132:6 132:7 134:12 157:5 <b>information</b> [66] 7:17 7:19 13:14,19,19 25:4 26:23 29:14,21 31:25 32:25 33:12,16,17,19 34:17 38:24 39:19 40:4 40:5 43:25 47:17 60:14 61:21 70:22 106:20 108:13,14 112:5 115:13 115:14 117:22,23 119:9 120:17 121:12 123:23 124:1 129:17 130:20 131:21 135:17 139:10,18 139:23 144:6,20 145:8 146:5,10 151:13 158:23 192:4 198:5,18 201:10 223:8 224:11 226:4 229:16 245:15 247:8 255:6 258:14 278:19 279:9 <b>informed</b> [18] 103:5 110:16 134:5,21 137:13 145:13 157:3 195:1 235:20 242:4 244:24 258:20,20,21 259:4,6 266:15 269:25 <b>informing</b> [1] 13:8 <b>infrequent</b> [1] 12:17 <b>initial</b> [7] 108:19 139:11 139:13 146:18 198:3,4 246:10 <b>initiate</b> [1] 293:12 <b>initiated</b> [2] 230:17 281:5 <b>initiative</b> [1] 10:4</p>	<p><b>input</b> [2] 11:24 229:16 <b>inquire</b> [1] 201:12 <b>inquired</b> [1] 296:10 <b>inquires</b> [1] 24:12 <b>inquiries</b> [8] 224:9 243:17 244:1 267:9 285:16 294:4 299:14,18 <b>inquiry</b> [9] 1:2 11:19 34:17 57:7 156:16 270:17 296:15 301:4,7 <b>insight</b> [9] 100:4,7 117:24 178:15 185:4,11 195:15 260:10,23 <b>insights</b> [1] 233:7 <b>instance</b> [3] 101:10,12 101:14 <b>instances</b> [1] 52:13 <b>instead</b> [3] 125:1 178:9 266:9 <b>Institute</b> [5] 186:25 187:9,19,24 188:2 <b>Institutional</b> [1] 93:11 <b>instructed</b> [1] 295:3 <b>insulting</b> [1] 165:25 <b>Integrated</b> [2] 1:11,18 <b>intended</b> [2] 38:16 100:11 <b>intention</b> [1] 261:7 <b>interest</b> [8] 21:10,25 22:6 28:4 71:16 99:23 273:14 274:1 <b>interested</b> [5] 74:23 118:16 257:12 260:21 277:1 <b>interestingly</b> [2] 178:19 179:7 <b>internal</b> [11] 51:24 187:17 193:8,10,13,16 193:24 194:7,11 272:6 272:23 <b>internally</b> [1] 70:24 <b>internationally</b> [1] 35:13 <b>internet</b> [1] 209:17 <b>interpret</b> [4] 65:12 138:10 196:24 208:8 <b>interpretation</b> [5] 131:4 247:18 273:8 274:9 276:4 <b>interpreted</b> [1] 129:6 <b>interspersed</b> [1] 211:4 <b>intervene</b> [6] 96:10,12 97:21,25 110:6,7 <b>interventions</b> [1] 219:15 <b>interview</b> [3] 70:4,6 144:5 <b>interviewed</b> [1] 225:7 <b>introduce</b> [1] 66:6 <b>introduced</b> [2] 26:14 107:10 <b>introduction</b> [4] 65:10 132:12 148:23 245:15 <b>invasive</b> [3] 247:2,24 248:1 <b>invest</b> [1] 180:1</p>	<p><b>invested</b> [4] 172:2,8 176:4 183:16 <b>investigations</b> [1] 193:4 <b>investing</b> [4] 168:3 169:21 172:16 175:16 <b>invitations</b> [1] 9:24 <b>invite</b> [1] 27:24 <b>involve</b> [3] 46:9 83:20 238:16 <b>involved</b> [22] 9:10 44:6 72:5 74:12,16 76:2 81:5 86:10 94:11 106:13 107:14 109:19 154:2 162:11,13 230:23 232:7 256:11 260:16 262:9,17 289:10 <b>involvement</b> [6] 9:12 70:7 84:18 86:13 94:16 104:15 <b>involves</b> [1] 152:21 <b>involving</b> [4] 11:21,22 64:6 230:10 <b>issue</b> [118] 9:11 11:21 13:21 18:4,22,25 19:5 19:15,20,23,25 20:25 21:8,19 24:25 25:1,16 26:7,15 30:21 34:23 37:24 38:1,6,10,11,14 41:3 53:7 55:17 56:8 59:5 60:23 61:4 62:17 64:22 66:4 70:17 72:9 72:10 74:16,18 84:19 85:4,9,23 99:10,14 100:8 106:3,4,13,18,21,23 107:5,7 108:2,4,8,21,25 109:1,2,9,18,20,25 110:2 116:1,25 119:3,10 121:5 121:6 126:11,19 127:7 127:13,16 131:21 132:2 132:6,19 133:24 134:5 134:21,23 135:7 136:8 136:10 137:17 141:1 151:10 175:22 185:24 186:2 189:12 195:16 205:11,13 213:24 223:11 223:21 227:24 228:6 230:15 231:10 232:23 238:1,14 243:22,23 257:17,23 266:7 270:24 281:17 <b>issues</b> [35] 4:24 32:20 70:9 71:15,19 75:8,10 75:12 81:6,7 83:5 85:14 93:15,18 98:15,20 99:1 101:2,3 103:5 106:1,24 120:24 126:2,3 133:16 134:4 135:1 139:25 140:2 175:23 179:14 225:23 257:22 276:11 <b>it'll</b> [1] 159:12 <b>item</b> [2] 17:6 82:25 <b>items</b> [1] 209:6 <b>itself</b> [11] 27:10 54:5 85:18 86:14 89:8 113:4 169:3,13 233:25 260:7 297:22</p>
<p align="center"><b>-I-</b></p> <p><b>i.e</b> [1] 181:12 <b>idea</b> [15] 99:6 125:8 174:9 174:10 183:18 186:4 212:23 213:9 222:8,10 234:12 235:2 252:10 264:2 283:21 <b>idem</b> [1] 48:24 <b>identical</b> [2] 141:23 147:17 <b>identified</b> [11] 20:6 158:9 160:25 175:23 184:6 254:24 263:18 264:3 279:15 282:22 283:2 <b>identifies</b> [3] 126:14 210:24 256:5</p>		<p align="center"><b>-J-</b></p>		

Inquiry on Hormone Receptor Testing

<p><b>J</b> [2] 288:23,23  <b>January</b> [2] 79:21 88:13  <b>Jennifer</b> [1] 1:16  <b>Joan</b> [4] 27:21 37:5 95:4 156:19  <b>job</b> [2] 171:1 226:3  <b>jobs</b> [1] 169:2  <b>John</b> [38] 2:2 4:15,20 24:9 37:17 69:7 83:23 85:25 86:4,6 92:1,3,7 102:8 160:21 164:20 176:8 185:15 188:8 195:6 199:21 232:5 233:20 234:22,22,23 235:2 238:1 240:17,20,23 241:3,14 255:17 278:17 291:14,17 294:24  <b>John's</b> [9] 78:12 86:11 138:3 177:14 188:5 195:20 205:21 301:8,11  <b>join</b> [1] 263:5  <b>joined</b> [1] 263:4  <b>joining</b> [1] 262:13  <b>Jonathan</b> [3] 90:1,3 104:16  <b>Jones</b> [3] 87:20 88:3,25  <b>jot</b> [1] 200:3  <b>journalistic</b> [1] 126:21  <b>judicial</b> [1] 57:7  <b>Judy</b> [2] 301:2,13  <b>July</b> [30] 10:13 11:3 20:9 24:12 25:6,7 27:20 30:16 31:4 32:10 48:19 52:21 197:25 231:18 233:17 234:3 236:12,20 237:21 237:25 238:5,7,22,24 242:8 245:12 265:7 267:6 295:18 297:4  <b>June</b> [8] 52:21 154:12 197:25 227:6,11 230:8 231:8 263:18  <b>jurisdictions</b> [2] 35:12 63:7  <b>Justice</b> [8] 1:4 4:4 79:12 90:7 131:16 294:1,3 301:6</p>	<p><b>kidding</b> [1] 128:8  <b>kin</b> [2] 263:23 265:23  <b>kind</b> [15] 20:21 39:7 54:18 72:6,13,16 73:3 75:12 128:6 130:13 143:6 143:9 161:6 224:11 288:20  <b>knew</b> [18] 11:12 86:6,7,9 86:13 89:14,15 91:3,4 93:4 94:16,17 104:16 132:2 193:7 234:14 248:6 280:14  <b>knowing</b> [8] 56:11 91:14 91:17,18 93:5,6 277:1 296:25  <b>knowledge</b> [16] 5:23 81:13 84:19 93:8,11,18 105:14 143:18 170:10,21 171:7 184:17 185:12 200:13 236:10 262:24  <b>known</b> [19] 25:15 53:6 53:14 72:10 86:4,19 87:13 90:14,18 94:13 95:6 178:1,3 185:8 188:8 188:25 236:10 240:14 241:13  <b>knows</b> [1] 72:20</p>	<p>219:10 223:1,2 246:23 294:10 297:21  <b>late</b> [7] 138:5 150:24 154:11 155:25 156:3 164:6 196:12  <b>law</b> [1] 151:8  <b>lawyer</b> [3] 213:18 260:22 262:9  <b>lawyers</b> [1] 144:15  <b>lay</b> [1] 198:6  <b>lead</b> [2] 167:11 179:23  <b>leader</b> [3] 79:3 161:3 177:9  <b>leadership</b> [5] 7:2 10:6 10:8 12:13 13:18  <b>leading</b> [1] 181:10  <b>leafing</b> [1] 113:9  <b>learned</b> [5] 85:1 176:16 176:18,21 293:18  <b>learning</b> [3] 81:24 85:2 250:15  <b>least</b> [2] 11:22 36:13 59:4 91:23 119:8 145:24 156:11 189:15 190:7 203:4 214:21 215:13 232:4 240:16 267:24 269:3 289:9 290:19,20 292:7 297:20  <b>leave</b> [11] 31:22 39:21 61:4 75:2 181:13 205:15 238:2 239:25 263:2 294:7 295:6  <b>leaves</b> [1] 8:2  <b>leaving</b> [3] 91:20 101:9 295:8  <b>led</b> [1] 247:2  <b>left</b> [14] 13:17 71:6 217:20,20 219:18 220:14 221:16 222:4 238:8,11 238:13,14 289:9 294:12  <b>legal</b> [13] 36:21 151:4,13 151:20 205:12 245:9 259:10 260:2,7 261:18 261:19 262:14 293:12  <b>legions</b> [1] 257:6  <b>legislation</b> [5] 14:9 36:14,24 261:8,23  <b>legislative</b> [3] 9:18 63:19 63:23  <b>length</b> [3] 25:19 98:12 272:25  <b>less</b> [4] 5:4 32:24 89:13 254:18  <b>lesser</b> [1] 50:24  <b>Lesson</b> [1] 65:1  <b>letter</b> [77] 36:17 160:18 161:17,19 163:13,23 164:2,5,8,9,15,16,20,25 165:11,12,19 166:1,5 167:11,18 168:12,14,18 168:22 169:14 170:1,4,8 170:10 171:5,10,14,20 171:21,22 174:6,14,15 174:19,20,21 175:8,11 177:3,3,19 178:4,7,10 178:20 179:8 180:6 181:8</p>	<p>181:14,17,19,19,24 183:5 183:9,22,24 185:3,11,12 185:16 186:16 189:3 190:6 210:12,13 227:6 228:2,2 229:22,23  <b>letterhead</b> [2] 159:19 278:24  <b>letters</b> [3] 32:1 163:7 165:8  <b>level</b> [17] 39:20 69:13 72:13 74:12 75:3,15,19 76:4 108:7 137:8 254:20 260:4,11,24 263:6,7 279:14  <b>levels</b> [1] 230:2  <b>liaison</b> [1] 133:14  <b>life</b> [2] 72:2 78:7  <b>light</b> [2] 213:15 224:17  <b>likely</b> [7] 106:9 126:14 138:5 156:3 272:2 291:18 293:12  <b>likewise</b> [1] 183:21  <b>limited</b> [5] 12:23 23:13 33:17 71:10 73:10  <b>line</b> [6] 32:1 63:11 147:20 148:1,3 222:11  <b>lines</b> [1] 139:19  <b>link</b> [2] 168:5 169:16  <b>linkage</b> [1] 67:7  <b>list</b> [2] 3:1 122:8  <b>listed</b> [5] 116:11 129:4 214:23 242:5 245:4  <b>listened</b> [2] 156:17,18  <b>listening</b> [2] 74:20 156:20  <b>lists</b> [1] 229:9  <b>literally</b> [2] 82:7 147:3  <b>lives</b> [1] 35:20  <b>lobbied</b> [1] 63:5  <b>lobby</b> [1] 183:24  <b>lobbying</b> [8] 67:19 68:11 171:25 178:12 181:18 182:6,18 230:23  <b>lobbyist</b> [1] 184:25  <b>local</b> [1] 66:12  <b>Locally</b> [1] 64:17  <b>located</b> [1] 162:21  <b>Locke</b> [1] 145:11  <b>longer</b> [3] 57:3 150:14 293:24  <b>look</b> [28] 62:4 64:15 111:10 112:3 113:18 115:23 132:10 149:9 160:16 166:4 177:14 179:7 185:2,2 204:14 210:11 216:2 232:1 259:14,15 263:16 267:23 285:20 288:16 291:9,25 292:2 297:17  <b>looked</b> [11] 91:25 138:24 146:17 148:22 149:20 154:24 171:4 196:13 217:8 252:13 259:14  <b>looking</b> [30] 27:6 63:8 68:15 113:3 116:2 117:9</p>	<p>120:5 132:21 140:4 147:15 148:9 152:11 154:14 171:22 197:8 224:11 232:3 233:15 244:2,3,10,10,20 254:6 261:4 269:15 273:13 276:17,23 277:20  <b>looks</b> [1] 75:19  <b>Loretta</b> [1] 8:10  <b>lose</b> [2] 179:24 181:11  <b>loss</b> [1] 66:24  <b>lost</b> [1] 200:7  <b>lots</b> [2] 112:6 257:16  <b>low</b> [1] 287:2  <b>lowers</b> [1] 116:4  <b>Loyola</b> [1] 90:23  <b>lunch</b> [7] 11:2 26:9 27:8 27:12 166:11,13,24  <b>lunchtime</b> [1] 77:6  <b>Lynn</b> [1] 8:8</p>
<b>-L-</b>				
<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>
<b>-M-</b>				
<p><b>Kara</b> [1] 1:10  <b>keen</b> [3] 24:14 149:18 150:4  <b>keep</b> [6] 55:13,15 66:3 125:23 143:18 169:9  <b>keeping</b> [2] 141:18 150:7  <b>kept</b> [8] 109:23 110:1 123:8 143:6,10 146:9 269:9,9  <b>key</b> [35] 116:17,21 117:12 119:21,21 121:9 123:22 123:25 124:10 127:10,12 127:15,17,19 129:3 130:16,22 131:5,5 132:22 135:23 136:19 137:19 148:10 149:18 150:25 151:6 207:12,14 208:16 217:19,21 221:16,17,17</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>	<p><b>lab</b> [17] 55:15,16 56:3 108:11 177:14 192:18 193:19 196:19,21,25 201:14 205:24 214:16 226:5,7,17,20  <b>laboratories</b> [3] 223:10 224:21 271:25  <b>laboratory</b> [12] 76:11 161:2,4,16 177:10 179:16 192:6,22 210:19 280:12 298:2,6  <b>Labour</b> [1] 79:5  <b>Labrador</b> [5] 35:16 159:18 253:12 301:8,11  <b>Labrador-Grenfell</b> [1] 1:17  <b>labs</b> [3] 65:1 198:22 226:10  <b>lack</b> [6] 65:5 172:13 173:5,25 260:12 272:3  <b>laid</b> [1] 115:14  <b>Laing</b> [1] 1:10  <b>language</b> [7] 65:17 67:10 163:24 168:23 175:9 185:20 273:19  <b>large</b> [11] 7:5 9:22 11:21 83:10 93:5 107:4,25 128:21 133:12 165:19 266:15  <b>larger</b> [2] 51:10 83:11  <b>largest</b> [3] 6:21 82:4 91:17  <b>last</b> [29] 31:13,20 33:25 36:8,9,10 79:18 89:20 111:24,25 126:6 133:2 134:15 142:14 147:20,25 148:3 169:18 183:10 187:7 189:4 192:5 215:9</p>

<p>200:24 201:4 217:7,25 231:8 232:4,24 235:24 277:10 301:12</p> <p><b>Margaret</b> [1] 301:6</p> <p><b>Marilyn</b> [3] 290:17 292:24 293:16</p> <p><b>Mark</b> [1] 1:15</p> <p><b>MARKED</b> [2] 122:17 191:11</p> <p><b>marketplace</b> [2] 228:24 229:1</p> <p><b>Marshall</b> [3] 79:25 80:1 80:7</p> <p><b>Marshall's</b> [1] 80:6</p> <p><b>match</b> [1] 142:15</p> <p><b>material</b> [1] 61:16</p> <p><b>matter</b> [23] 12:4 24:15 29:24 43:5 62:3 65:22 75:14 76:17 100:21 101:8 107:10,21 109:12 135:14 163:12 170:2 238:16 241:24 285:4,20 295:25 296:14 301:3</p> <p><b>matters</b> [8] 9:18 12:14 49:24 84:15 113:15,19 160:6 268:1</p> <p><b>Matthews</b> [1] 288:22</p> <p><b>may</b> [101] 9:19 13:3 26:10 29:5 30:5,6,7,8 34:4,9 37:2,11 39:11,15,17 41:17,21 49:2 56:7 57:18 57:21 58:10,10 60:2 67:10,13 73:10 89:23 94:23,25 112:9 113:9,15 116:3 133:2,16 134:15 135:25 136:1,2 138:5 141:24 142:3,16,24,24 142:25 148:21 149:7 150:8,11,19 153:18,20 154:11,14 155:25 156:1 156:3 158:8 187:16 189:9 189:17,22 190:24 191:1 192:1 193:2,20 195:18 196:12 197:24 201:10,14 202:11 205:22 206:23,24 210:15,16,25 219:23 221:11 232:4,24 241:4 247:2 249:15 252:20 256:19,23 259:14 262:17 269:6 270:3,10 286:14 289:11 291:3 293:18 296:6</p> <p><b>McCormack</b> [2] 290:17 292:25</p> <p><b>mean</b> [105] 12:12 16:21 22:1 29:23 38:8,11 48:24 49:3,17 54:8 64:7 65:13 67:22 76:3 78:5 81:24 82:3 85:3,15 86:6,6 96:16,16,23 97:4 98:19 99:1 100:3,4 102:10,18 102:22 103:6 104:12,17 106:21 107:12,25 108:13 109:17 110:9 114:12 115:12 117:4,25 118:20 121:2,10 128:20 129:12 129:21 131:9,25 133:10 133:16,24 134:3,20 135:12 136:15 137:9</p>	<p>138:10 139:9 154:11 163:5,15 165:8 174:9,13 175:7 177:25 182:17 183:21 184:13 188:10,16 188:21,23 191:17 192:1 194:22 198:2,17,24 199:2 199:25 206:13 208:3 209:21,21 216:11 220:16 222:6 237:2 239:2 257:14 258:25 264:24 265:17 267:18 271:4 273:23 276:10,23 279:14</p> <p><b>meaning</b> [3] 196:21 207:24 283:3</p> <p><b>means</b> [5] 169:9 249:13 254:18 256:17 301:10</p> <p><b>meant</b> [13] 19:5 192:15 199:11 218:7 219:7 247:10 248:19,24 249:7 249:9 261:25 283:7,25</p> <p><b>measures</b> [10] 108:9 110:10 181:25 194:17 197:11,14 198:7 226:9 226:23 227:1</p> <p><b>mechanism</b> [2] 39:22 39:25</p> <p><b>media</b> [20] 64:17 66:12 66:23 69:18 70:3 84:20 85:1 103:3,13,15 108:3 109:11 126:16 130:3 156:20 198:19 205:8 225:6,8 286:20</p> <p><b>medical</b> [11] 1:15 6:25 7:24 8:23 29:18 35:1 162:7,14 179:12 210:15 210:17</p> <p><b>medicine</b> [5] 161:2,4,16 177:11 227:9</p> <p><b>meet</b> [2] 255:4 258:12</p> <p><b>meeting</b> [31] 5:4 24:19 25:20,25 26:2,9 27:8,12 29:17,17,20,21 31:6,10 32:4 102:21 192:14 203:20,25 205:6 220:20 268:3,17 270:14 286:19 286:24,24 293:20 295:4 295:9 296:15</p> <p><b>meetings</b> [18] 4:20,22 9:12 10:12,15,18 11:15 11:20 12:3,15 18:24 29:3 29:11 30:6 48:17 104:18 194:24 200:14</p> <p><b>MEM</b> [2] 160:1,7</p> <p><b>member</b> [2] 81:3 266:16</p> <p><b>members</b> [7] 1:13 14:7 14:23 15:4 37:14 195:5 228:19</p> <p><b>memo</b> [6] 30:25 31:1,2 72:6,7,15</p> <p><b>Memorandum</b> [1] 61:24</p> <p><b>Memorial</b> [2] 78:15 227:8</p> <p><b>memory</b> [5] 162:23 204:10 209:4 218:21 268:22</p> <p><b>mentioned</b> [11] 5:2,6 7:15 9:20 11:10 12:2</p>	<p>16:7 29:24 188:23,24 243:1</p> <p><b>message</b> [24] 54:9 117:12 127:10,12,15 130:16,22 131:10 135:23 137:19 148:10 151:1,6 179:2 180:5,8,12 207:14 208:17 216:24 218:8 221:17,17 278:18</p> <p><b>messages</b> [22] 65:9 116:17,21 119:21,22 121:9 123:22,25 124:10 127:15,17,19 129:4 131:5 131:6 132:22 136:20 149:18 207:12 217:19,21 221:16</p> <p><b>messaging</b> [1] 65:24</p> <p><b>met</b> [9] 12:9 137:11 182:11 200:9,10,11 211:17 223:22 254:20</p> <p><b>Methadone</b> [4] 98:20 99:2,24 100:10</p> <p><b>method</b> [3] 45:12 137:21 272:4</p> <p><b>MHA</b> [1] 86:7</p> <p><b>Michelle</b> [2] 150:24 223:4</p> <p><b>middle</b> [15] 20:18,20 52:14 85:7 198:20 199:19 199:20 230:8 237:8 269:14 274:22,24 275:5 297:23 298:12</p> <p><b>midway</b> [2] 187:14 231:8</p> <p><b>might</b> [24] 15:2 19:15 21:9 24:23 27:17 32:23 46:8 68:4 72:3,5,10,23 102:15 109:9,11,12 110:6 112:13 167:11 180:21 188:4 213:17 241:3 264:11</p> <p><b>mind</b> [27] 21:19,25 34:22 38:14 39:10 42:8 45:12 55:15,18 62:15 123:18 123:24 124:7 125:24 139:7 156:16 180:20 181:3 184:5,13 185:14 196:15 197:2,24,25 265:25 296:18</p> <p><b>minds</b> [1] 22:3</p> <p><b>Mine</b> [1] 289:13</p> <p><b>minimizing</b> [1] 34:23</p> <p><b>minister</b> [155] 5:22 6:4 7:3 8:16,17 9:3,5,17,25 10:5,21 11:16 12:20 14:10,15,18 15:2 17:18 18:17 20:2,20 24:14 25:1 28:5,10,18 35:14 37:6 38:20 39:20 40:18 41:7 48:22 56:24 60:13,19,20 60:21,25 61:5,6 66:6 69:13 70:2,5,8,15 71:6,7 71:15 72:5,8,14,20 74:1 76:9 78:6 79:9,12,19 80:14 81:17 82:8,20 83:19,21,25 84:12 85:12 85:25 86:1,3,15 87:4 90:7,13 91:4,22 94:12 94:14 95:6,20 96:3,8 97:4,5,9,9,17 102:24</p>	<p>106:9 109:9,25 112:1 114:4,7 118:24 119:2 120:6 121:16 123:14,16 124:15 125:10 128:23,23 130:13,19,19 137:4 143:15 145:23 151:7 153:24 155:17 156:8,19 159:21,25 160:21 163:9 163:10 178:8 182:11 185:15 188:7 190:1,6 192:24 200:20,22 202:9 202:10 214:1 215:9,16 227:7 230:8 233:20 235:18 239:7 257:11 259:17 268:5 269:4 273:10,11 276:6 281:11 281:18 287:16 293:24 294:1,3 297:9</p> <p><b>Minister's</b> [5] 94:7 96:4 123:18 160:23 268:18</p> <p><b>ministerial</b> [2] 32:2 79:16</p> <p><b>ministers</b> [4] 12:22 72:4 72:4 163:6</p> <p><b>ministry</b> [5] 41:24 93:23 106:16 143:5 182:5</p> <p><b>Ministry's</b> [1] 106:14</p> <p><b>minutes</b> [5] 66:4 77:10 77:15 231:21 237:12</p> <p><b>mis</b> [1] 142:25</p> <p><b>misinterpreted</b> [3] 189:10,17,22</p> <p><b>mislead</b> [1] 270:17</p> <p><b>missed</b> [1] 116:3</p> <p><b>mistake</b> [1] 142:25</p> <p><b>mistrust</b> [1] 23:17</p> <p><b>misunderstood</b> [2] 242:18 252:21</p> <p><b>mixed</b> [1] 142:4</p> <p><b>model</b> [1] 35:11</p> <p><b>Moira</b> [27] 7:14 8:16 40:12,16 41:14 42:5 54:23 86:1,19 101:20,23 101:24 140:18,18 141:8 146:19 150:19 195:7 199:21 232:5 278:16 290:12,22 291:14,19 292:25 293:3</p> <p><b>moment</b> [4] 160:15 167:14 242:7 274:5</p> <p><b>Monday</b> [1] 278:23</p> <p><b>monetary</b> [1] 19:21</p> <p><b>money</b> [5] 16:18 51:16 51:20 52:15 229:2</p> <p><b>monitored</b> [1] 25:3</p> <p><b>monitoring</b> [2] 15:19 16:8</p> <p><b>month</b> [5] 30:18 43:6 190:1 201:8 217:4</p> <p><b>months</b> [17] 5:21 6:6 23:14 67:25 68:4 79:11 79:13 89:24 121:13 135:15 136:5 191:21 196:7 197:19 198:4 215:8 215:20</p> <p><b>Moria</b> [1] 146:8</p>	<p><b>morning</b> [10] 4:4,4,7 31:10 77:25 78:2 196:13 208:23 217:9 300:20</p> <p><b>Morris</b> [5] 140:18 141:5 146:8,19 150:18</p> <p><b>Moss</b> [2] 301:2,13</p> <p><b>most</b> [16] 33:5 34:20 35:7 55:18 106:24 110:13 126:14 136:22 165:8 208:5 232:20 237:4 270:24 272:2 279:11 293:7</p> <p><b>Mount</b> [17] 116:9,12 136:21 154:23 157:7 158:4,14 187:1 203:7 246:4,4 247:14,15 254:24 255:2 275:9,11</p> <p><b>mouse</b> [4] 4,9 31:16 122:24 123:1</p> <p><b>move</b> [3] 52:4 169:10 179:20</p> <p><b>moving</b> [1] 169:9</p> <p><b>MP</b> [3] 90:21,23 105:18</p> <p><b>Mrs</b> [1] 36:10</p> <p><b>Ms</b> [15] 15:14 31:7 73:22 74:5 197:3 212:22 215:12 246:2 250:10 254:13 256:4 290:21 292:13 294:4 296:11</p> <p><b>Mt</b> [1] 298:8</p> <p><b>multi-patient</b> [1] 43:3</p> <p><b>Mundon</b> [5] 87:11 103:22 232:7 233:17 278:16</p> <p><b>must</b> [2] 42:5 123:17</p> <p><b>mutual</b> [1] 18:5</p> <hr/> <p style="text-align: center;"><b>-N-</b></p> <p><b>nailed</b> [1] 114:20</p> <p><b>name</b> [8] 10:12 80:6 87:22 186:8 188:23 223:16 224:3 241:21</p> <p><b>named</b> [1] 90:9</p> <p><b>names</b> [1] 146:24</p> <p><b>Nash</b> [1] 227:15</p> <p><b>nation</b> [1] 169:3</p> <p><b>national</b> [6] 64:24 182:22 189:8 219:13,25 223:12</p> <p><b>nationally</b> [1] 278:22</p> <p><b>nature</b> [11] 13:9 36:25 76:11 80:22 81:23 106:13 131:4 164:14 211:24 224:10 294:25</p> <p><b>near</b> [2] 255:5 258:14</p> <p><b>necessarily</b> [7] 39:17 117:13 123:21 130:3 131:11 133:24 202:11</p> <p><b>necessary</b> [4] 103:15 115:16 229:13 239:5</p> <p><b>need</b> [9] 36:8 123:2 154:16 174:5 180:1 182:25 229:25,25 273:20</p> <p><b>needed</b> [5] 127:19 132:8 183:5 257:19 259:4</p>
--	--	--	---	--

<p><b>needing</b> [1] 83:4  <b>needs</b> [6] 67:1 72:14          127:12,15 137:1,10  <b>negative</b> [12] 47:24 65:3          148:7 221:1,4 247:14          249:4 254:14,16,21          255:25 272:7  <b>negatively</b> [1] 167:2  <b>negatives</b> [2] 255:22          266:5  <b>neither</b> [1] 146:20  <b>nervous</b> [1] 256:16  <b>nested</b> [1] 24:10  <b>never</b> [20] 30:14 71:5          94:25 98:2 102:6,14          123:6 129:12,19 130:2          130:21 178:5 200:11          203:12 209:15 220:6          223:20 264:16 295:2          297:9  <b>new</b> [14] 10:3 24:13 36:24          60:13,19 61:25 63:9          104:17,21 105:18 138:2          186:1 222:5 295:5  <b>Newbury</b> [1] 1:16  <b>newer</b> [2] 122:12 206:4  <b>Newfoundland</b> [11]          35:16 125:20 159:18          178:22 214:16 227:8          253:12 274:12,13 301:8          301:11  <b>news</b> [3] 70:18 102:15,15  <b>newspaper</b> [1] 235:5  <b>next</b> [17] 5:11 64:21 77:2          77:20 103:21,21 104:24          186:18 219:10 221:16          222:22 245:8 263:23          265:23 288:7 291:25          295:3  <b>night</b> [1] 286:16  <b>NL</b> [3] 1:9,15,16  <b>NLMA</b> [1] 227:18  <b>nobody</b> [7] 147:3 184:16          203:10 252:23 264:24          265:1 276:7  <b>non-specific</b> [1] 272:13  <b>none</b> [1] 119:21  <b>nor</b> [4] 94:20 189:20          190:11 252:11  <b>Norm</b> [1] 90:21  <b>normal</b> [2] 66:16 273:4  <b>North</b> [1] 78:12  <b>notation</b> [2] 202:15          204:2  <b>note</b> [136] 47:14 72:7          111:17,25 112:4,12,14          113:22 114:3,9,14,16,17          115:4,8,15,20,25 117:5          119:1,3 123:21 125:21          126:1,2,3,10,13 127:3,8          127:9 128:18 129:13,22          130:22 131:17 132:17          135:24,25 136:2,4,17          138:23 139:6,16 140:6          141:20,22 142:5 144:1,9          145:9,13 147:16 148:21</p>	<p>150:11,13 152:1,2 153:2          153:18 158:24 159:8          166:21 186:19 187:4,12          192:16,17 193:3 201:13          202:11 203:17 204:2,17          205:22 206:14,23 207:3          217:8,23 219:23,24          222:24 233:19,21,22,25          235:3,4,6,21 236:5          237:23 238:8 239:8,10          239:13 240:2,3,18 243:18          243:21 244:7 245:22          259:14,24 269:11 270:12          285:22 286:3,8,10 287:10          287:14 288:3,6,7,17          289:3,19 291:16,17 292:8          293:1,5,10,14,19 294:7          294:12,22 295:14 296:7          299:19,20  <b>notebook</b> [1] 123:15  <b>noted</b> [3] 124:8 205:22          293:5  <b>notes</b> [80] 25:11 30:17          69:23,25 82:10,13 85:17          101:8 111:9 114:13          115:17 120:11 121:15          123:8 125:5,14,22,23,24          125:25 126:20 127:18          128:5 129:6,21 131:11          139:13,14 141:19 143:8          143:20 145:22,22 146:4          146:5,10,22 147:6 155:2          155:4,6 187:7,21 188:14          188:22 190:18,19 191:18          191:19 192:10 200:1,2,3          200:3,4 212:4,8 216:18          217:9 218:15 220:6 232:3          235:14 238:2 239:5 240:5          250:16 252:10,13,18          258:17 265:18 267:24,25          268:4 269:8,9 295:6          296:23 298:18  <b>nothing</b> [6] 48:23 219:20          220:1 233:11 265:9 281:2  <b>notice</b> [1] 30:21  <b>noticed</b> [3] 36:17 79:24          145:6  <b>notification</b> [2] 44:19          263:20  <b>notified</b> [2] 116:13 156:9  <b>notify</b> [1] 43:20  <b>noting</b> [1] 223:5  <b>notion</b> [2] 125:8 212:23  <b>Notwithstanding</b> [1]          20:19  <b>November</b> [18] 1:1          25:11 47:14 123:15 144:2          144:9,16 145:9,13 187:12          203:17 204:2 205:12          212:3 215:7 216:7 264:16          295:10  <b>now</b> [145] 10:21 14:6          19:13 27:14,19 30:24          31:11 32:20 36:9 42:16          48:8 49:10,24 59:7 60:1          63:1 73:5 74:3 76:12          77:2 83:18 84:14 91:7          94:9 95:16,18 100:24          101:4 106:8 108:5 109:4</p>	<p>111:8,12,16,23 113:21          114:6 121:22,24 122:19          122:22 123:6 124:8          125:19 126:7,8 129:2          130:12 132:10,11,21          137:19 138:5 140:4          145:17 148:22 149:7          150:12,19 151:4 152:14          159:1,14 160:17,18          161:23 169:18 173:12          174:5 176:7,16 182:14          183:9,17 185:14 189:2,3          189:14 191:7 193:2,13          195:18 199:16 201:8          202:7 203:18 206:3 207:2          208:13 209:11 211:1          214:14 217:3 219:11,13          219:25 221:15 226:17          228:8 231:19 232:2,6,17          232:23 233:15 241:17          245:3,11,12,25 246:15          247:8,25 248:4 253:10          254:13,25 255:6,25 257:3          259:8 261:4 263:25          264:24 266:20 271:11          273:10 276:4,6 277:20          278:14 279:21 281:23          282:12 283:21 285:20          286:4 287:14 292:1          293:17 295:12 296:23          297:18 298:12 299:7  <b>number</b> [78] 8:5,10          10:18 11:15 14:19 15:15          15:24 24:8 30:5 37:7          63:6 78:17 79:1 81:6          96:19 101:3 104:1 106:25          120:14 123:13 126:23          136:4 139:25 140:2          152:14 153:3,9 155:3          186:15 197:9 200:5          201:23 207:12,13,15,19          211:7,23 215:8,11,16          226:8 242:1,14,22 244:15          246:17 255:15 260:15          262:11,12,16 263:4 264:2          264:10 279:16 280:2,3          280:13,20 281:1,5,5,23          281:24 282:12,15,23          283:3,7,16 284:5,12,13          284:19 288:2 293:9          296:17  <b>numbers</b> [8] 83:10 242:7          242:9 244:19 258:6 264:7          281:17 286:22</p>	<p><b>occasions</b> [4] 81:6          120:14 182:11 223:22  <b>occupied</b> [1] 38:20  <b>occur</b> [5] 113:19 136:9          136:13,15 198:21  <b>occurred</b> [8] 13:4,20          38:13 42:5 76:12 82:16          196:8 296:5  <b>occurrence</b> [2] 12:10          35:8  <b>occurring</b> [2] 35:9          270:14  <b>October</b> [19] 62:9 64:14          64:25 67:18 177:4 179:9          181:8 187:4 235:20,21          236:7 271:13,19 294:11          294:15,17 295:24 297:6          297:7  <b>odd</b> [1] 235:8  <b>off</b> [5] 132:2 143:9 287:16          287:20 295:7  <b>offer</b> [3] 121:7 201:19          229:18  <b>offered</b> [3] 137:13 151:6          277:2  <b>offhand</b> [2] 149:3,5  <b>office</b> [17] 26:12 27:9,10          38:20 41:24 107:12          108:20 159:20 160:23          162:22,24 229:16 235:19          236:6 268:18 274:1          291:21  <b>officer</b> [2] 89:3 279:1  <b>officers</b> [1] 39:14  <b>official</b> [2] 8:12 28:22  <b>officials</b> [17] 29:18 85:12          96:1 110:7 125:7 133:13          133:17,22 158:17 166:25          211:10 215:15 216:2          220:3 224:24 229:11          279:10  <b>offset</b> [1] 20:5  <b>often</b> [17] 7:16 9:17,20          9:24 12:8 70:1 71:11          73:9 81:4 103:8 104:13          115:13 125:3 129:3 130:9          131:25 200:10  <b>oftentimes</b> [2] 102:20          125:14  <b>old</b> [1] 36:25  <b>once</b> [6] 25:9 74:4 138:3          145:1 189:8 258:5  <b>oncologist</b> [2] 249:11          256:18  <b>oncologists</b> [5] 63:6          67:19 68:8,15 199:8  <b>one</b> [140] 5:15 6:8 8:3          16:6,7 17:23 18:24 21:5          28:7,13 29:10 32:20,21          33:1 36:11 39:11 40:8          46:8,19,25 53:20 57:17          59:4 61:15 64:1 66:15          69:8 71:22 72:3 74:16          75:7 78:7 80:4 86:8          96:20 101:7,10 104:4          107:2 111:10,14,16          112:14 113:24 114:13</p>	<p>119:4 122:3,12 132:22          138:23 140:11,17 141:13          142:12 144:7,8,13,16          145:24,25 146:6,6 147:18          148:15,22,25 149:4,7,8          149:21 150:20,21 151:25          152:11 155:5,6 156:1          163:23 167:11 173:20          174:6 176:22 179:3 183:2          184:1 185:9 186:22          187:10,15 190:18 191:2          194:11 207:7,12,13,15          209:12 211:13,17 212:3          213:17 216:18 217:5,6          225:12,23 226:10 236:5          236:25 237:3,5 241:17          253:20 258:25 261:12,15          261:25 262:2 268:4,25          270:15 271:24 277:5,17          278:4 287:3 289:8 290:2          291:3 292:17 294:8          295:14,18,24 296:6 297:4          297:4,5,7,18  <b>onerous</b> [1] 118:25          229:18  <b>ones</b> [4] 104:5 127:1          188:18 246:4  <b>ongoing</b> [2] 39:16 179:19  <b>Ontario</b> [1] 210:25  <b>onto</b> [1] 80:4  <b>open</b> [2] 102:19,23  <b>opened</b> [1] 82:7  <b>opening</b> [7] 82:19 83:4          83:9 91:15 103:6 139:19          148:23  <b>operating</b> [2] 36:19,24  <b>operation</b> [1] 36:23  <b>operational</b> [11] 12:14          13:16 38:1,9 74:12 75:3          75:15,19 76:3 96:10          108:25  <b>operational's</b> [1] 72:13  <b>operationally</b> [6] 96:12          96:17 97:13,19 106:22          108:5  <b>operative</b> [1] 36:16  <b>operator</b> [1] 78:21  <b>opinion</b> [3] 22:7,7 23:3  <b>opportunity</b> [3] 34:16          35:15 41:9  <b>opposed</b> [3] 85:2 120:21          209:22  <b>opposition</b> [1] 78:25  <b>optimization</b> [2] 272:3          272:13  <b>order</b> [6] 56:18 195:23          209:7 283:12,14 284:12  <b>organization</b> [6] 22:23          23:8,17 38:24 50:4 97:22  <b>organizational</b> [1] 69:5  <b>original</b> [3] 25:4 247:1          247:23  <b>originally</b> [4] 246:17          247:13 249:3 280:10  <b>originated</b> [1] 286:2  <b>Osborne</b> [540] 2:6 77:4          77:21,22,25 78:1,4,10</p>
--	--	---	--	--

-O-

**O'Dea** [1] 1:17  
**observation** [2] 80:12  
 156:14  
**observer** [2] 184:23,24  
**obtain** [1] 266:17  
**obtained** [1] 139:4  
**obtaining** [1] 119:9  
**obviously** [17] 10:22  
 37:2 71:4,22 137:9  
 151:25 163:10 168:4  
 171:19,23 192:15 248:16  
 273:19,23 276:23 278:5  
 283:15  
**occasion** [2] 10:22 14:13



<p>79:22 80:9,13,17 81:1 81:10,19 82:1,17 83:1 83:15,22 84:16,24 85:10 85:21 86:5,21 87:5,10 87:14,19,23 88:4,8,12 88:19 89:1,9,22 90:4,10 90:15,19 91:8,12 92:13 92:18,23 93:2,12,20,24 94:5,15,22 95:7,13,22 96:13,22 97:3 98:1,25 100:2,15,22 101:11,17 101:22 102:5,9,17 103:17 103:24 104:10 105:4,8 105:24 106:15 107:15,24 108:23 109:16 110:8,24 110:25 111:5,15,23 113:11,21 114:1,11,22 115:2,10 116:18,23 117:19 118:6,10,17,21 119:5,11,17,23 120:2,7 122:5 124:3,16,20,25 125:11 127:11,21 128:2 128:9,14 129:11 130:1 130:24 131:8 132:5,13 133:9,23 134:2,19 135:10 136:14 137:7 138:11,25 139:8 140:1,8,12,15,22 141:2,6,12,16 142:2,9 142:13,21 143:12,15,22 144:10,17,18,24 145:5 146:1,12,25 147:7,12,22 148:2,6 149:2,10,15 150:3,15 151:9,23 152:6 152:15,23 153:5,11,17 153:21 154:3,9,21 155:12 155:20 156:4,13 157:2 157:15,24 158:5,11,18 158:22 159:4,9 160:3,10 161:8,20 162:1,6,10,20 163:4,14 164:4,12,22 165:2,6 166:7,16 167:3 167:7,13,17,21 168:11 168:17 169:6,11 170:3,7 170:14,20,24 171:9,13 171:18 172:6,12,18 173:3 173:9,14,22 174:12,18 175:1,6,14 176:10,15,20 177:3,16,24 178:23 179:4 180:7,11,23 181:4,15 182:8,16 183:20 184:10 184:15,20 185:5,18,25 186:18 188:9,15,20 189:18 190:9,17,23 191:14,16,25 192:12 193:6,12,18 194:5,13,21 195:9,13 196:2,18,23 197:5,21 198:1,15 199:4 199:23 200:23 201:2,16 201:21 202:13 203:9,15 204:9,16 205:25 206:7 206:11 207:1,9,16,21,25 209:2,14,20 210:3,8 211:12 212:9,14,18,25 213:6,12 214:6,11,17 215:2,3,22 216:9,20,25 217:14,22 218:1,6,18 219:1,5,21 220:5,10,17 220:25 221:8,12,21 222:1 222:7,19,23 223:19,25 224:13 225:14,18,22 226:14 227:20 228:10 229:3,19 230:14 231:11 232:9,14,18 233:2,8,12</p>	<p>234:8,13,19,24 235:10 235:16 236:1,8,17,22 237:7,13,18 238:6,12,18 238:23 239:3,14,18,22 240:11,25 241:5,7,11,20 242:10,16,23 243:3,8,13 243:19 244:4,11,16,25 245:14,20 246:7,19 247:11 248:3,12,22 249:8 249:17,23 250:7,11,17 251:5,10,14,19,24 252:14 252:19 253:1,16,21 254:1 254:7 255:8,12,20 256:6 256:12,22 257:8,13 258:2 258:16,24 259:23 261:9 261:20 262:7,23 263:9 263:13 264:4,15,23 265:10,16 266:6,22 267:2 267:11,17 268:4,10,15 269:1,18,23 270:9 271:3 271:7,15 273:17 274:14 274:19,23 275:2,6,13,21 276:9,22 277:7,12,25 278:15 279:4,24 280:16 282:8,16,21 283:9,13,23 284:7,23,25 285:5,11,17 285:24 286:5,9,13,17 287:4,13,22 288:1,9 289:8,12,18 290:14,24 291:5,22 292:4,9,16,20 293:21,25 294:9,16,20 295:15,20 296:2,12 297:1 297:12 298:9,15,23 299:4 299:10,15,21 300:2,8,21</p> <p><b>Osborne's</b> [1] 110:20 <b>otherwise</b> [3] 28:23 113:9 179:19</p> <p><b>Ottawa</b> [1] 159:24</p> <p><b>Ottenheimer</b> [216] 2:2 4:5,6,15,17 5:1,14 6:3 6:13,19 7:9,13,23 8:4,19 8:24 9:7,14 10:16,24 11:4,9 12:5,11 13:2,11 14:3,8,16 15:5,10 16:10 16:20 17:8,20 18:7,12 18:19 19:1,6,10,17 20:10 20:15,22 21:12,18 22:13 22:18 23:1,5,9,15,22,24 24:3,16,24 25:21 26:6 26:19 27:5 28:2,19 29:2 29:7,16 30:13,23,24 31:17,21 32:5,11 33:6 33:11,24 34:3,7,12 35:24 36:7 37:1,17,21 38:2,7 39:3,9 40:7,13,17,23 41:15,20 42:7,13 43:17 43:24 44:8,16,25 45:4,8 45:13,24 46:4,11,16,22 47:4,8,12,25 48:5,11 49:1,6,12,18,25 50:6,10 50:15,20,25 51:6,12,17 51:23 52:6,10,16,22 53:1 53:8,17,24 54:3,12,20 54:25 55:4,8,14 56:6,10 56:21 57:16,20 58:1,12 58:17,22 59:3,10,16,23 60:5,11,18 61:3,12 62:12 62:18,23 63:17,18,22 64:10 65:14 67:3,8,21 68:6,17,22 69:2,7,10,24 70:19 71:1,24 72:17,25 73:6,18,23 74:7,13,24</p>	<p>75:4,9,16,21 76:5,13,19 76:22,24 83:21 91:22 92:7 93:19 118:5 160:21 164:21 166:6 178:8,20 185:3 187:13 233:1 281:12,19</p> <p><b>Ottenheimer's</b> [3] 91:4 118:13 156:19</p> <p><b>outgoing</b> [1] 83:20 <b>outline</b> [2] 115:4,11 <b>outlined</b> [1] 212:1 <b>outset</b> [1] 197:7 <b>outside</b> [11] 26:12 55:16 56:3 70:13 74:17 87:1 97:21,24 213:4 262:18 287:19</p> <p><b>overall</b> [2] 97:10 284:23 <b>overlooked</b> [1] 145:12 <b>overnight</b> [1] 26:3 <b>overseen</b> [1] 73:25 <b>overview</b> [1] 125:22</p> <p><b>own</b> [29] 26:8 27:11 32:16 32:17 33:14,21 35:11 41:17 42:8 52:5 61:8 62:15 72:2 96:19 107:11 123:18,20,24 124:7 156:14 163:6 185:14 190:18 191:19 200:3 209:22 217:6,7 296:18</p> <p><b>owner</b> [1] 78:20</p> <hr/> <p style="text-align: center;"><b>-P-</b></p> <hr/> <p><b>P</b> [8] 27:19 113:20 121:24 140:4 159:2 177:20 288:15 297:17</p> <p><b>P-0046</b> [2] 177:1 271:10 <b>P-0074</b> [1] 27:20 <b>P-0099</b> [1] 36:18 <b>P-0123</b> [1] 125:19 <b>P-0124</b> [1] 186:16 <b>P-0125</b> [12] 110:22 111:8 132:10 138:22 146:7 148:20 150:11 152:13 153:8,14 154:15 289:16</p> <p><b>P-0131</b> [1] 79:15 <b>P-0146</b> [1] 179:8 <b>P-0161</b> [1] 42:19 <b>P-0164</b> [1] 61:18 <b>P-0165</b> [3] 160:16 183:11 189:3 <b>P-0166</b> [4] 3:2 121:24 122:15,17 <b>P-0167</b> [1] 227:5 <b>P-0168</b> [1] 232:2 <b>P-0169</b> [1] 267:23 <b>P-0170</b> [1] 278:14 <b>P-0171</b> [4] 285:20 291:9 292:1,19 <b>P-0172</b> [1] 292:23 <b>P-0190</b> [1] 122:20 <b>P-0198</b> [3] 3:2 122:16 122:17 <b>P-0304</b> [1] 30:24</p>	<p><b>P-0305</b> [1] 23:22 <b>P-0314</b> [6] 3:3 190:22 191:11,13 204:12 217:5 <b>P-047</b> [1] 214:25 <b>P-048</b> [2] 209:11 214:24 <b>p.m</b> [4] 233:18 278:17 291:15 300:25 <b>Paddock</b> [1] 288:23 <b>page</b> [123] 1:1 31:12,13 42:21,23 43:2 46:2 62:4 62:22 66:21,21 79:15,18 80:5 111:12,13,15 112:3 112:4 113:7,20 115:23 123:10,14 126:6,6,8 127:2 132:10 138:21 140:15 141:20,23,23 142:5,6,8,15,16,18,24 146:7 147:20,21,25 148:3 149:9 150:10,13 152:13 153:1,8,14 154:14 160:16 160:17 161:13,18,18 177:20 179:8 183:11 186:16,19 187:3,5,6,11 187:11,19,21 192:9,10 193:21 194:4 204:13 205:23,23 206:3,22,25 208:14 210:12,21,22 211:3,5 215:1,10 217:6 219:9 220:14 221:7 222:12,22,24 223:1,16 233:16 245:7,8,11 258:9 258:10 259:8 261:5 263:1 263:16 271:10,11 278:23 288:16 289:5,5 291:25 292:1,17,19,24 293:10 297:18,21,23</p> <p><b>pages</b> [8] 111:10,19 126:5 140:4 148:19 191:13 211:2 217:5 <b>paid</b> [4] 178:22 182:7 272:16,21 <b>Pamela</b> [1] 1:13 <b>panel</b> [2] 208:7 246:10 <b>paper</b> [11] 62:24 63:13 63:25 65:16 66:18 67:14 67:23 77:8 123:4 148:10 204:15 <b>paragraph</b> [31] 28:8 64:16,21 142:14 167:22 168:1,24 169:12,19 173:5 173:15,19 175:19,25 179:10 181:23 183:9,10 186:23 189:4 246:3,23 247:10 253:24 256:5 273:2 274:4 281:2,25 282:18 284:14 <b>parcel</b> [1] 65:25 <b>Pardon</b> [1] 111:1 <b>parliamentary</b> [3] 9:4 9:16 79:2 <b>Parrott</b> [1] 288:23 <b>part</b> [28] 10:14 17:21 32:12 34:15 64:8 65:24 71:12 107:4,25 126:9 128:21 136:22 180:8,12 181:16,19 186:22 226:19 245:22 248:24 250:2,22 250:23 252:1 254:10 273:15 282:6,22</p>	<p><b>partially</b> [1] 127:25 <b>particular</b> [53] 5:7 7:14 10:7,9 11:20 17:6 18:4 25:13 27:16 28:4 40:5 42:9 62:6 65:21 69:20 72:9,24 73:13 75:23 83:14 99:9 112:14 126:4 127:13,16 133:12 134:7 135:19,22 136:16 137:11 141:18 150:20 152:14 154:10 155:7 157:17 167:22 187:25 194:15 197:13 215:6 217:11 229:23 230:1,3 238:16 259:21 260:1,9 261:5 274:4 286:16</p> <p><b>particularly</b> [6] 43:15 120:11 175:4 217:5 229:9 273:12</p> <p><b>partly</b> [2] 290:21,22 <b>parts</b> [2] 90:25 127:18 <b>party</b> [1] 239:12 <b>pass</b> [2] 217:3 231:18 <b>passed</b> [1] 93:23 <b>passing</b> [1] 236:4 <b>past</b> [12] 5:2,16 7:16 9:20 10:19 11:11 14:17 23:6 23:12 57:6 196:9 216:12</p> <p><b>pathologist</b> [13] 165:23 177:12,12 186:24 187:8 187:18,23 188:1 228:18 249:11 256:18 272:17,22</p> <p><b>pathologists</b> [44] 159:23 160:19 164:2 165:15,16 165:17 166:1 167:24 168:6,7 169:1,5 171:25 172:14 173:6 174:1,8 175:16 176:5 178:11,12 178:21 179:20 180:15 181:20 182:6,21,24 183:2 183:6,17 184:7 185:1 199:9 228:5,16 229:12 229:14 230:2,13,25 273:6 274:6 275:25</p> <p><b>Pathologists'</b> [1] 179:17 <b>pathology</b> [29] 161:1,3 161:4 168:4 169:22 172:3 172:8,17,19,21,25 173:2 173:8,21 177:9,10 180:2 183:23 189:11 210:25 227:12 16,24 246:11 247:1,7,24 253:13 255:4</p> <p><b>patient</b> [15] 33:20 34:23 55:17 56:2 132:24 173:24 189:9,16 218:11 219:15 246:13 263:24 265:23 266:2,10</p> <p><b>patient's</b> [2] 279:13,23 <b>patiently</b> [1] 118:12 <b>patients</b> [85] 32:1 34:13 34:14,24 35:19 43:12,21 44:20 45:19,23 46:10 47:1,23,23 62:1 63:2 64:20 65:6 67:2 68:16 99:8 109:18,22 110:15 116:1,2,3,5 132:21 133:5 137:10,11 138:3 152:19 152:20,22 154:2 155:19 156:9 157:4,9,14,17</p>
--	---	--	---	--

<p>158:3,9 169:24 207:24 208:2,10 219:18 226:6 228:20 242:1,4,14 244:24 246:17,25 247:13,22 248:10,16,18 249:3 250:24,25 252:5 253:2 253:11,15,25 254:14,17 258:19,20,20 263:12,17 264:2,10,13,18 265:4 274:13 284:5</p> <p><b>patients'</b> [2] 137:1 157:9</p> <p><b>pay</b> [5] 171:25 178:12 181:20 182:19 183:24</p> <p><b>paying</b> [1] 165:16</p> <p><b>peer</b> [2] 186:24 187:7</p> <p><b>Peninsula</b> [1] 52:20</p> <p><b>people</b> [28] 21:7,22 35:16 56:19 66:1 126:12,24 147:5 179:25 181:12,12 213:4 237:2,4 244:19 251:20 253:7,8 255:24 260:16,25 262:13,16 263:4 268:13 280:15 287:11 289:10</p> <p><b>perceived</b> [2] 243:22 263:7</p> <p><b>perceiving</b> [1] 260:25</p> <p><b>percent</b> [13] 26:22 152:18,21 153:3,3,9,10 153:15,16 154:2 211:21 254:18 255:1</p> <p><b>percentages</b> [1] 153:15</p> <p><b>perfect</b> [2] 31:15 145:23</p> <p><b>perform</b> [2] 104:9 114:10</p> <p><b>perhaps</b> [30] 12:21 16:13 16:24 20:1 27:23 28:16 28:18 35:12 68:1 80:2 82:10 99:21 117:24 125:8 130:7 151:10 166:10 168:7 184:19,21 192:2 216:12 237:8 240:15 254:11 255:17 262:13 267:7 288:2 290:2</p> <p><b>period</b> [15] 8:9,25 25:13 30:10 41:2 44:9,11,12 56:11 70:3 100:1 194:23 196:7 225:2 232:24</p> <p><b>permanent</b> [7] 91:25 134:12 143:6,7,10,19 145:21</p> <p><b>person</b> [10] 24:6 70:3,23 90:9 95:10 103:22 188:3 196:21 246:12 266:3</p> <p><b>personal</b> [10] 32:16,17 33:21 35:20 49:2 80:24 95:14 131:10 191:19 258:17</p> <p><b>personally</b> [9] 5:17 9:24 11:12 57:3 86:22 91:3 94:18 95:1 260:6</p> <p><b>personnel</b> [1] 29:18</p> <p><b>persons</b> [2] 94:11 196:22</p> <p><b>perspective</b> [20] 70:16 72:21 74:22 76:9 93:15 95:21,25 97:6,8,12 98:22 106:14 107:1 109:1 114:25 116:25 137:3</p>	<p>178:7 259:13 276:16</p> <p><b>pertaining</b> [1] 151:13</p> <p><b>Peter</b> [10] 1:10 223:6,15 223:20 224:3,5,10,15,18 225:5</p> <p><b>Pg</b> [6] 2:3,4,5,7 3:2,3</p> <p><b>phone</b> [8] 13:1 26:2 27:3 28:18 47:2 48:3,18,19</p> <p><b>phrase</b> [4] 48:14 131:2 198:13 202:12</p> <p><b>phrased</b> [1] 260:19</p> <p><b>physician</b> [3] 44:1,1 47:3</p> <p><b>physician/patient</b> [1] 22:4</p> <p><b>physicians</b> [9] 44:6,24 45:7 46:10 157:9 167:2 180:16 228:25 230:11</p> <p><b>pick</b> [2] 186:10 204:21</p> <p><b>picked</b> [2] 206:5,15</p> <p><b>piece</b> [3] 40:5 204:14 266:12</p> <p><b>pieces</b> [3] 30:19,19 163:17</p> <p><b>Pike</b> [1] 1:15</p> <p><b>pinpoint</b> [1] 260:13</p> <p><b>pitfalls</b> [3] 273:7 274:7 276:1</p> <p><b>place</b> [26] 7:6 17:2 26:11 26:20 29:4 39:12 45:16 47:20 55:25 57:8 71:13 89:14 100:11 108:10 110:11 194:17 197:11,15 198:8 201:25 226:9,24 227:2 268:18 282:1 300:13</p> <p><b>placed</b> [1] 40:19</p> <p><b>plaintiff</b> [3] 262:2,3,3</p> <p><b>plaintiffs</b> [1] 262:1</p> <p><b>plan</b> [5] 15:18,24 63:21 67:6,9</p> <p><b>play</b> [3] 14:24 44:19 71:5</p> <p><b>played</b> [4] 10:8,14 105:1 178:17</p> <p><b>Pleasantville</b> [1] 98:21</p> <p><b>pleased</b> [7] 155:8 208:14 208:25 209:4 216:23,24 229:17</p> <p><b>PO</b> [2] 291:18,19</p> <p><b>point</b> [77] 5:8 17:3 19:21 23:13,18 29:15,22 30:9 30:14 32:21 34:1 36:7 38:18 42:6 48:21 51:21 53:20 56:3 57:16,17,17 59:7 61:15 66:3 69:20 71:9 73:13 78:7 79:23 80:4 81:3 86:8 103:21 104:11 113:8 124:9 141:13 144:7,13 145:24 147:16 151:5 154:10 155:7 157:17 165:7 168:19 178:19 183:18 185:23 194:15 197:13 211:6,13,17 213:23 216:11 230:23 231:4 236:10 237:25 238:5</p>	<p>241:19 242:8,11 245:12 252:22 253:10 260:9 264:1,1 265:6 268:7 274:10 279:21 280:25 287:3</p> <p><b>pointed</b> [3] 42:16 46:2 168:10</p> <p><b>points</b> [2] 69:4 125:23 28:18 47:2 48:3,18,19</p> <p><b>policies</b> [1] 15:20</p> <p><b>policy</b> [15] 6:23 8:3 37:24 38:6 74:23 90:11 91:7 91:20 92:17 97:18 105:2 105:5,12 126:18 202:16</p> <p><b>political</b> [2] 70:8 105:10</p> <p><b>politics</b> [3] 78:18 94:24 118:20</p> <p><b>Pollett</b> [6] 227:13 228:8 228:13 229:20,21 231:9</p> <p><b>Pollett's</b> [1] 228:9</p> <p><b>poor-quality</b> [2] 172:2 172:8</p> <p><b>portfolio</b> [5] 79:6,11,16 81:13 118:25</p> <p><b>portfolios</b> [1] 79:1</p> <p><b>pose</b> [1] 21:16</p> <p><b>posed</b> [2] 115:21 119:15</p> <p><b>position</b> [17] 23:14 28:6 28:12 32:14 33:14 36:21 41:23 48:16 57:14 63:1 78:9 86:9 91:20 92:1,6 188:24 297:8</p> <p><b>positions</b> [1] 179:21</p> <p><b>positive</b> [13] 65:9 66:10 66:11 108:9 152:19 221:1 221:4 226:9 254:22 256:1 272:5,12,24</p> <p><b>positives</b> [1] 255:22</p> <p><b>possibility</b> [6] 91:19 189:9,15,19,21,23</p> <p><b>possible</b> [10] 28:11,20 33:13 47:16 51:1 96:3 99:10 195:5 208:11 293:16</p> <p><b>possibly</b> [2] 68:7 270:25</p> <p><b>potential</b> [9] 110:16 115:4,5 117:12 179:1 184:9 190:7,10 262:5</p> <p><b>PR</b> [3] 152:19 275:12,19</p> <p><b>practical</b> [2] 248:21,23</p> <p><b>practice</b> [4] 105:3 114:25 127:17 147:5</p> <p><b>prayers</b> [1] 35:21</p> <p><b>pre</b> [1] 156:15</p> <p><b>pre-qualify</b> [1] 252:2</p> <p><b>preamble</b> [1] 186:3</p> <p><b>precipitate</b> [1] 262:12</p> <p><b>precise</b> [1] 127:6</p> <p><b>predecessor</b> [1] 187:13</p> <p><b>Predham</b> [9] 234:1 241:18,19 246:2 253:10 254:13 256:4 290:12,21</p> <p><b>premature</b> [1] 183:25</p> <p><b>Premier</b> [3] 35:18 288:21 293:2</p>	<p><b>Premier's</b> [4] 94:3 235:19 236:6 291:21</p> <p><b>Premier/Minister</b> [1] 126:15</p> <p><b>preparation</b> [16] 15:18 16:8 17:2,12 25:10 69:25 70:6 71:8 83:2,3 114:15 117:6 287:19 290:20,23 291:11</p> <p><b>prepare</b> [5] 69:22 70:22 93:7 125:22 163:3</p> <p><b>prepared</b> [19] 114:15 126:12 140:17 146:7,19 149:1,8 150:18 210:23 233:22 234:1 235:6 239:6 239:9 240:5 241:17 287:15 290:11,19</p> <p><b>prepares</b> [1] 72:15</p> <p><b>preparing</b> [5] 72:5 126:24 144:4,6,13</p> <p><b>presence</b> [1] 11:22</p> <p><b>present</b> [6] 10:17 50:5 58:24 59:4 70:15 79:17</p> <p><b>presented</b> [6] 16:1 56:13 127:12,16,19 138:13</p> <p><b>President</b> [10] 159:22 160:25 164:1 174:7 178:10 179:12 183:22 184:6 210:16 279:1</p> <p><b>press</b> [1] 31:25</p> <p><b>pressing</b> [1] 33:5</p> <p><b>presumably</b> [17] 10:11 13:25 22:2 37:25 39:13 65:4 79:21 93:17 126:19 126:25 134:11 135:6 161:17 237:4 258:13 299:18 300:5</p> <p><b>presume</b> [3] 13:24 138:5 227:10</p> <p><b>pretty</b> [2] 82:2 211:19</p> <p><b>prevail</b> [1] 99:25</p> <p><b>prevent</b> [2] 35:9 297:25</p> <p><b>prevention</b> [1] 219:16</p> <p><b>previous</b> [4] 21:20 38:16 78:23 241:8</p> <p><b>previously</b> [2] 37:6 255:24</p> <p><b>primarily</b> [17] 44:24 71:13 84:18 85:3,24 100:9 102:19 103:7 104:11 107:2 108:9 109:2 109:17 115:12 121:3,14 140:25</p> <p><b>primary</b> [8] 45:23 55:25 56:1 70:14 119:8 136:25 137:10 257:18</p> <p><b>print</b> [4] 119:15,20 126:22 227:11</p> <p><b>priority</b> [2] 132:23 218:10</p> <p><b>Pritchard</b> [86] 2:3 4:2,3 4:7,8,15,16 5:3,10,25 6:7 6:15 7:7,11,20 8:1,14,21 9:2,9,15 10:10,20 11:1,6 12:1,7,24 13:5,16,22 14:5,12,25 15:7 16:2,5 16:12 17:4 18:2,9,14,21</p>	<p>19:3,8,12 20:7,12,17 21:4,14 22:10,15,20 23:2 23:20 24:1,5,18 25:18 25:23 26:17,25 27:13 28:4,11,15 29:1,9 30:2 30:14,22 31:19 32:7,19 33:8,23 35:23 49:23 53:4 112:9,11,23 113:1 122:4 231:3</p> <p><b>Pritchard/Jenny</b> [1] 1:9</p> <p><b>private</b> [1] 78:18</p> <p><b>privy</b> [3] 60:14 134:16 135:9</p> <p><b>proactive</b> [1] 189:11</p> <p><b>probable</b> [1] 41:13</p> <p><b>probe</b> [1] 125:3</p> <p><b>probed</b> [3] 121:17 130:10 139:21</p> <p><b>problem</b> [22] 20:5 72:24 76:10,18 116:14 132:19 133:3 137:20 183:19 184:3 189:14,16 190:3,8 192:6 193:22 194:3,18 203:14 221:13 268:9 272:15</p> <p><b>problems</b> [4] 75:3,19 183:19 281:3</p> <p><b>procedural</b> [1] 296:5</p> <p><b>procedure</b> [2] 97:18 189:6</p> <p><b>procedures</b> [4] 65:7 223:15 225:24 298:2</p> <p><b>proceed</b> [1] 261:7</p> <p><b>proceedings</b> [2] 151:4 151:20</p> <p><b>process</b> [26] 14:22 16:15 16:19 17:21 30:4,9 34:15 35:10 41:22 44:10,12 53:23 54:5,18 57:2,6,13 83:18 136:25 175:17,22 230:17 254:15 281:25 282:24 283:18</p> <p><b>processes</b> [2] 187:17 298:6</p> <p><b>proclaimed</b> [1] 36:15</p> <p><b>produced</b> [1] 266:21</p> <p><b>professional</b> [4] 22:7 23:3 35:1 257:21</p> <p><b>professionally</b> [1] 94:21</p> <p><b>professionals</b> [6] 107:6 199:7 204:25 205:1,3 257:20</p> <p><b>Professor</b> [2] 161:1 227:14</p> <p><b>profound</b> [1] 109:21</p> <p><b>progesterone</b> [4] 84:15 133:5 234:3 241:25</p> <p><b>program</b> [11] 6:23 8:3 10:7 65:11 75:10,12 161:3 177:9 179:16 285:10,13</p> <p><b>progress</b> [6] 138:1 149:25 155:9 208:20 209:1,5</p> <p><b>progress/results</b> [1]</p>
---	---	---	---	--

<p>208:15 <b>promise</b> [1] 4:13 <b>prompt</b> [1] 221:19 <b>prompted</b> [2] 6:16 224:23 <b>prompting</b> [1] 218:15 <b>pronouncement</b> [1] 48:23 <b>proposed</b> [2] 50:5 265:21 <b>protection</b> [1] 213:10 <b>protocol</b> [3] 272:20 295:5 297:11 <b>protracted</b> [1] 30:5 <b>proudly</b> [1] 35:15 <b>provide</b> [16] 34:16 52:15 98:9 104:19 115:15 120:19 128:19,22 130:20 131:20 137:8 152:8 199:8 200:8 229:17 277:23 <b>provided</b> [28] 13:12,13 25:5,12 35:2 61:21 100:4 100:7 101:2 108:7 114:3 117:24 129:5 134:11,12 145:7,15,23 158:24 178:15 191:21 207:3 211:15 226:22 242:9 258:5 259:2 279:6 <b>providing</b> [12] 29:13 39:19 67:11 96:2 97:14 106:20 107:16,20,23 108:12 129:19 145:11 <b>province</b> [31] 11:14 14:21 21:22 35:11 55:16 55:24 61:21 62:3 63:1 63:10 65:8 66:7 152:18 165:17 167:23,25 168:24 169:2,25 172:7 173:10 174:1 175:18 176:3 180:3 180:17 182:22 183:15 228:16 230:1,12 <b>provinces</b> [2] 63:12 179:18 <b>provincial</b> [4] 65:10 91:1 177:8 223:12 <b>public</b> [43] 10:1 28:10 30:21 31:10,14,24 32:15 32:25 33:13 37:24 38:6 38:10,14 43:5 45:15 48:10,20,21,23 49:9 64:6 65:20 66:7 70:9,17 71:5 71:8,15,19 74:17 99:23 116:7 130:20 199:18 214:4 223:14 225:24 226:3 227:3 263:8,22 265:22 266:15 <b>public's</b> [1] 66:24 <b>publicly</b> [3] 72:10 156:11 286:23 <b>published</b> [1] 43:6 <b>purport</b> [1] 184:8 <b>purpose</b> [2] 65:18 109:14 <b>pursued</b> [1] 78:14 <b>pursuing</b> [1] 214:1 <b>put</b> [26] 27:16,18,22 48:9 62:4 98:21 99:18 101:15 115:9 116:24 121:11</p>	<p>131:25 134:20 169:13 194:17 197:11,15 198:2 198:8 201:25 203:12 207:4 216:12 226:8 247:18 257:15 <b>puts</b> [1] 178:6 <b>putting</b> [6] 62:11 73:16 108:10 110:11 226:24 227:2 <b>puzzled</b> [1] 113:9</p> <hr/> <p style="text-align: center;"><b>-Q-</b></p> <hr/> <p><b>Q.C</b> [622] 1:7,8 2:4,7 36:3 37:18,19 38:4,17 39:6,24 40:11,15,21 41:8 41:18 42:2,11,15,22 43:1 43:22 44:2,14,22 45:2,6 45:10,17 46:1,6,13,18 46:24 47:6,10,21 48:2,7 48:13 49:4,8,15,22 50:2 50:8,12,17,22 51:2,8,14 51:19 52:1,8,12,18,24 53:3,10,19 54:1,10,16 54:22 55:2,6,11 56:5,15 57:15,23 58:8,14,19 59:1 59:6,12,18,25 60:7,16 61:1,9,14,22 62:14,21 63:15,20 64:2,12 66:19 67:5,17 68:3,13,19,24 77:3,12,19,23,24 78:3 79:14 80:3,11,19 81:8 81:15,21 82:15,21 83:13 83:17 84:11,21 85:6,19 86:2,18 87:3,7,12,16 88:2,6,10,15,24 89:7,19 90:2,8,12,17 91:6,10 92:11,15,21,25 93:10,16 93:22 94:1,8,19 95:3,9 95:15 96:7,18,25 97:20 98:23 99:16 100:12,19 101:6,13,19 102:1,7,13 103:12,20 104:6,23 105:6 105:22 106:6 107:8,18 108:15 109:3 110:3,18 111:2,7 112:16,25 113:17 114:5,19,24 115:7,19 116:20 117:15 118:3,8 118:15,19,23 119:7,13 119:19,25 120:4 121:20 122:11,18,23 123:5 124:5 124:18,23 125:6,18 127:23 128:4,11 129:1 129:24 130:11 131:1 132:3,9,15 133:20,25 134:9 135:2,21 136:18 137:18 138:20 139:2,24 140:3,10,14,24 141:4,10 141:14,25 142:7,11,19 143:1,14,25 144:12,22 145:3,16 146:3,15 147:2 147:9,14,24 148:4,8,18 149:6,13,17 150:5,17 151:15 152:4,10,25 153:7 153:13,19,23 154:5,13 155:10,16,22 156:6,25 158:15,20,25 159:6,11 160:8,14 161:11,22 162:3 162:8,16 163:1,11,21 164:10,17,24 165:4 166:3 166:9,14,22 167:5,9,15 167:19 168:8,15,21 169:8</p>	<p>169:17 170:5,12,17,22 171:2,11,16 172:4,9,15 172:22 173:1,17 174:4 174:16,23 175:3,12 176:6 176:12,17,25 177:18 178:18,25 179:6 180:9 180:19,25 181:6 182:2 182:12 183:8 184:4,12 184:18,22 185:13,21 186:9,14 188:12,17 189:1 189:24 190:14,20,25 191:6,12,22 192:8 193:1 193:9,15 194:1,9,19 195:4,11,17 196:4,20 197:1,17,23 198:11 199:15 201:7,18 202:6 202:19 203:11 204:7,11 205:17 206:2,9,21 207:6 207:11,18,23 208:12 209:9,16,24 210:5,10 212:5,11,16,20 213:2,8 213:14,21 214:8,13,22 215:5,24 216:15,22 217:2 217:17,24 218:3,14,20 219:3,8 220:2,8,13,22 221:6,10,14,23 222:3,9 222:21,25 223:23 224:8 225:1,16,20 226:11 227:4 228:7,12 229:5 230:7 231:1,16,25 232:11,16 232:22 233:4,10,14 234:10,16,21 235:1,12 235:23 236:3,11,19,24 237:9,16,20 238:10,15 238:20,25 239:11,16,20 240:8,13 241:2,9,16,23 242:12,20,25 243:5,10 243:15,25 244:8,13,21 245:2,17,24 246:9,22 247:20 248:8,20 249:6 249:14,19 250:5,9,13 251:2,7,12,17,22 252:7 252:16,24 253:9,18,23 254:3,12 255:10,18 256:2 256:8,20,24 257:10,25 258:8,22 259:7 261:3,11 261:22 262:20,25 263:11 263:15 264:8,21 265:5 265:12,20 266:19,24 267:4,13,22 268:12,24 269:13,20 270:6,22 271:5 271:9,17 274:3,16,21,25 275:4,10,15,23 276:14 277:4,9,15 278:10 279:20 280:1,7,18,24 281:7,13 282:7 283:6,11,20 284:3 284:11,21 285:3,7,15,19 286:1,7,11,15 288:13 289:2,15,24 290:4,9,16 291:1,7,24 292:6,11,18 292:22 293:23 294:2,14 294:18 295:11,17,22 296:4 297:16 298:11,20 298:25 299:6,12,17,23 300:4,10,15 <b>qualify</b> [2] 199:6 252:2 <b>quality</b> [21] 137:19 148:13 165:17 168:4,7 169:22 172:14 177:6 179:16,23 181:10 183:16 187:16 193:21 194:2 210:18 234:2 272:18</p>	<p>273:8 274:8 276:3 <b>questioned</b> [3] 25:19 223:9 224:20 <b>questioning</b> [3] 165:14 199:9 225:11 <b>questions</b> [52] 4:18 17:1 21:5 29:3 33:25 35:25 43:8 49:23 60:23 83:5,6 84:8 115:5,6,21,22,23 116:10,22 119:15,22 121:8,10,19 124:2 125:3 126:12,13,14,17,17,21 127:5,6 129:10 130:7 131:7,22 133:6 134:7 150:21 197:7,9 200:14 201:24 202:2 207:8 255:15 257:16 267:7 271:22 278:3 <b>quickly</b> [3] 79:24 157:7 208:10 <b>quiet</b> [1] 4:21 <b>quite</b> [12] 7:5 24:14 51:1 58:7 66:16 68:8 104:13 104:16 139:25 140:2 242:5 296:16 <b>quoted</b> [2] 223:7 225:6 <b>quotes</b> [1] 245:6</p> <hr/> <p style="text-align: center;"><b>-R-</b></p> <hr/> <p><b>R</b> [3] 227:16 288:21,22 <b>Radio</b> [1] 223:3 <b>raise</b> [15] 59:19 60:2,8 60:17 61:2 111:23 125:7 133:18 135:11 156:14 184:14 189:22 213:24 224:5 265:25 <b>raised</b> [19] 26:7 32:22 58:3 60:25 78:11 96:15 106:1 118:4 186:2 223:11 223:21 225:23 227:24 230:15 238:14,21 239:1 241:13 264:12 <b>raising</b> [2] 60:12 68:20 <b>randem</b> [1] 186:10 <b>rapid</b> [1] 219:16 <b>rare</b> [2] 232:13,19 <b>rarely</b> [1] 237:3 <b>rather</b> [5] 29:13 127:20 186:16 256:16 279:12 <b>rational</b> [1] 276:16 <b>re</b> [7] 31:10 115:25 116:8 177:5 227:11 234:3 241:25 <b>Re-elected</b> [1] 78:23 <b>Re-examination</b> [2] 2:4 37:17 <b>re-tested</b> [1] 298:8 <b>reach</b> [1] 18:5 <b>reached</b> [5] 168:10 226:12,17 228:17 276:20 <b>reaction</b> [1] 64:22 <b>read</b> [34] 46:7 66:22 82:12,23,23 128:7 139:12 147:20 171:8,10,14 173:20 174:20 180:12</p>	<p>188:14,18,22 193:3 219:24 223:17 245:19,21 252:21 261:24 265:21 267:6 271:21 273:22 279:7 282:18 283:24 284:8,10 299:8 <b>readily</b> [1] 117:3 <b>reading</b> [5] 200:2,2 208:20 248:11 253:5 <b>reads</b> [3] 169:19 223:3 261:6 <b>real</b> [1] 262:15 <b>really</b> [20] 4:23 5:11 59:8 63:10 70:12 74:10 97:24 98:15,17 99:20 116:16 134:17 208:4 210:20 256:14,16 262:18 276:13 281:2 296:16 <b>reason</b> [20] 22:25 23:7 23:10,17 98:2,13 102:10 108:12 111:20 113:11 152:8 186:6 189:15 200:7 201:19 224:6 260:21 264:17 272:2 276:16 <b>reasonable</b> [3] 170:16 170:18 172:1 <b>reasonably</b> [1] 75:14 <b>reasons</b> [3] 84:6 271:23 297:23 <b>reassessment</b> [1] 210:18 <b>recalled</b> [2] 48:15 164:7 <b>recalling</b> [1] 155:3 <b>receipt</b> [2] 43:19 161:14 <b>receive</b> [6] 13:19 56:25 57:12 234:6 239:7 291:12 <b>received</b> [37] 61:17 64:24 81:12 108:1,3 138:4,14 144:25 154:22 156:3 158:13 159:15 160:23 164:5,6 210:16 227:10 227:21,23 229:23 234:6 234:11 236:12 241:24 249:25 250:3 254:22 257:19 258:18 269:7 270:5 298:3,16 299:2,7 300:1,5 <b>receiving</b> [2] 227:18 269:11 <b>recent</b> [7] 64:13,25 66:23 168:2 169:20 176:2 183:14 <b>recently</b> [6] 36:15 43:7 261:7,12,16,19 <b>receptor</b> [11] 1:3 64:19 84:15,15 169:23 234:4 241:25 280:11 293:2,8 301:4 <b>receptors</b> [2] 24:14 137:22 <b>RECESS</b> [3] 77:16 166:20 231:22 <b>recognition</b> [1] 179:14 <b>recognize</b> [6] 23:12 38:23 190:10 229:11 245:22 278:6 <b>recognized</b> [8] 20:25 63:4 121:9 182:21 186:5</p>
--	--	--	---	--

<p>186:7 189:5,10 <b>recognizing</b> [1] 66:12 <b>recollection</b> [8] 24:20 26:4 34:19 66:2 136:16 157:19 199:25 211:16 <b>recommendation</b> [6] 21:2 62:2 215:10,10,19 263:21 <b>recommendations</b> [37] 137:23 138:14,15,18 149:22 154:25 155:13 195:22,24 196:7,8,11 197:10 208:17 209:8 211:3,7,9,14,22,24 212:1 212:2,7,12 214:4,19,24 215:14,16 216:3,17 221:24 298:4,18 299:3 300:7 <b>recommended</b> [1] 115:17 <b>recommending</b> [1] 189:13 <b>reconvene</b> [1] 300:19 <b>record</b> [7] 43:5 79:24 143:6,10,19 145:21 146:9 <b>recording</b> [1] 32:3 <b>recurring</b> [1] 116:5 <b>redacted</b> [2] 123:12 267:25 <b>reduced</b> [1] 14:21 <b>refer</b> [2] 163:24 199:19 <b>reference</b> [26] 25:14 28:3 30:15 44:17 47:15 58:5 59:8 66:15 113:15 187:22 193:21 197:18 202:25 208:23 218:24 235:22 236:9 243:17 250:15,18,19 252:17 264:9 280:2,19 297:22 <b>referenced</b> [4] 224:4 244:19 252:9 281:1 <b>references</b> [2] 28:17 202:25 <b>referred</b> [14] 10:18 15:14 36:18 37:10,23 84:14 113:10 123:10 169:18 208:22 222:15 232:5 259:12 295:23 <b>referring</b> [4] 73:22 190:7 281:24 289:4 <b>refers</b> [6] 36:19 64:23 148:12 173:20 253:24 274:5 <b>reflect</b> [3] 30:20 95:16 131:10 <b>Reflecting</b> [1] 26:2 <b>reflection</b> [1] 169:4 <b>reflects</b> [1] 123:19 <b>Reg</b> [1] 145:10 <b>regard</b> [1] 101:16 <b>regarded</b> [1] 21:23 <b>regarding</b> [5] 103:3 161:16 201:24 263:19 284:1 <b>regards</b> [1] 91:2 <b>regime</b> [2] 63:5 65:25</p>	<p><b>regional</b> [11] 1:11,18 14:1 15:2,13 16:16 18:16 22:23 140:19,20 219:12 <b>Registrar</b> [9] 4:13 23:21 77:21 110:22 111:11 122:1,9 152:12 289:5 <b>registry</b> [4] 143:11 161:6 289:7 297:20 <b>regular</b> [5] 25:2,4 30:1 69:16 133:14 <b>regularly</b> [5] 53:5,7,16 55:12 237:1 <b>Reid</b> [1] 288:22 <b>relate</b> [1] 256:3 <b>related</b> [8] 65:21,22 83:14 110:21 157:13 261:18 275:20 284:13 <b>relates</b> [2] 136:20 228:23 <b>relating</b> [2] 126:18 151:1 <b>relation</b> [4] 53:12 139:5 151:7 182:5 <b>relations</b> [2] 6:24 45:15 <b>relationship</b> [10] 5:7,13 11:7 22:4 37:12 100:13 100:16 101:20,25 103:23 <b>relationships</b> [1] 95:17 <b>relatively</b> [5] 30:1 43:7 69:12 104:17 199:24 <b>release</b> [1] 199:19 <b>released</b> [3] 198:19 226:4 286:23 <b>relevant</b> [2] 123:12 268:1 <b>reliability</b> [1] 65:7 <b>reliance</b> [1] 272:24 <b>relied</b> [7] 23:2 104:22 105:13,14 167:23 168:25 256:13 <b>reluctant</b> [1] 102:3 <b>rely</b> [3] 28:21 105:19 199:7 <b>remark</b> [1] 123:11 <b>remarks</b> [1] 279:17 <b>remember</b> [11] 19:19 41:25 54:19 62:24 66:10 139:3 159:15 204:25 206:12 255:14 269:8 <b>remembered</b> [2] 200:21 248:5 <b>remind</b> [2] 98:6 200:4 <b>reminder</b> [1] 220:18 <b>removed</b> [1] 136:1 <b>remuneration</b> [2] 185:1 230:13 <b>renovations</b> [2] 99:4,11 <b>reoccurrence</b> [1] 297:25 <b>reorganize</b> [1] 77:7 <b>repairs</b> [2] 99:4,8 <b>repeat</b> [1] 120:13 <b>repeated</b> [5] 30:16 135:24,25 192:7 211:8 <b>repeatedly</b> [1] 6:20 <b>repetitions</b> [2] 215:17</p>	<p>216:5 <b>replaced</b> [1] 142:25 <b>replacement</b> [2] 89:21 89:25 <b>report</b> [25] 15:16 56:12 138:4 156:2 176:23 179:13 184:2 210:21,23 211:1,4,5 214:23 215:7 215:11 221:24 246:11,11 247:1,24 266:21 271:12 271:14 273:15,16 <b>reporting</b> [2] 15:23 272:22 <b>reports</b> [26] 39:2 42:5 54:24 56:18,25 57:12 59:21,22 60:4,10 66:23 138:12 155:24 196:6 197:12 201:20 202:3 209:12 212:24 214:3 277:21 278:5,13 298:3 299:2,25 <b>repository</b> [1] 143:7 <b>represent</b> [3] 9:21,25 10:1 <b>representative</b> [2] 255:2 273:4 <b>representatives</b> [2] 247:5 258:11 <b>reproduction</b> [1] 189:7 <b>reputation</b> [2] 11:13 21:23 <b>request</b> [13] 7:16 13:19 17:23 20:23 24:9 40:9 41:6,14 69:19 70:4 108:4 144:20 243:21 <b>requested</b> [4] 29:25 37:9 191:20 244:7 <b>requesting</b> [1] 15:17 <b>requests</b> [2] 98:3,5 <b>require</b> [5] 229:15 250:1 253:12 279:16 282:23 <b>required</b> [11] 21:1 135:17 137:12 183:3 246:13 273:5 274:6 283:17,21 284:1,5 <b>requirements</b> [1] 17:24 <b>requires</b> [1] 272:13 <b>research</b> [1] 64:9 <b>resistant</b> [1] 92:1 <b>resolution</b> [1] 20:4 <b>resource</b> [5] 18:24 19:14 19:20,23,25 <b>resources</b> [1] 21:1 <b>respect</b> [16] 72:8 76:17 94:10 95:16 108:20 123:17 151:4 189:2 190:16 202:7 224:18,18 228:15 232:23 253:14 287:9 <b>respected</b> [2] 11:24 21:23 <b>respond</b> [6] 33:20 65:9 67:1 151:18 209:21 222:18 <b>responding</b> [5] 16:25 161:13,19 174:25 225:11</p>	<p><b>response</b> [26] 19:22 33:3 38:9 41:3,5 70:9 71:8 74:10 117:13 118:14 150:22,25 151:21,22 161:23 163:3 166:1 192:15 200:16 203:24 205:4 211:22 219:16 233:23 270:3 272:9 <b>responses</b> [3] 120:23 125:2 129:5 <b>responsibilities</b> [1] 15:17 <b>responsibility</b> [5] 76:3 174:10,14 201:22 202:5 <b>responsible</b> [12] 8:17 8:22 97:5,6,10,12,17,19 98:7 106:22 141:1 145:11 <b>rest</b> [2] 230:4,6 <b>restore</b> [1] 227:2 <b>restoring</b> [3] 223:14 225:23 226:3 <b>result</b> [13] 34:25 55:22 157:23 176:3 178:16 183:15 205:2 252:2,6 256:19 262:8 267:19 294:21 <b>resulted</b> [1] 19:15 <b>resulting</b> [2] 65:5 66:24 <b>results</b> [44] 43:16,20 45:18 47:7 54:15 55:21 64:18 110:14 112:6 116:7 116:13 136:20,21,23 155:4,18 157:7,18 158:13 208:6,6,8 209:5 214:3 223:10 224:21 242:3 244:15,23 246:3 263:24 265:24 266:17 272:12 273:9 274:9 275:8 276:4 280:2,4,14,20 281:20 297:24 <b>RESUMES</b> [1] 2:2 <b>retained</b> [1] 177:13 <b>retest</b> [3] 43:16 246:5 281:20 <b>retested</b> [11] 47:1 246:15 254:18,19 264:11,14 265:8,14 266:3 279:23 280:15 <b>retesting</b> [14] 43:20 85:2 136:21 152:20,21 154:1 157:22 242:2,14 254:15 254:23 255:2 258:7 266:5 <b>retests</b> [2] 203:8 244:15 <b>retired</b> [1] 89:2 <b>retrieval</b> [1] 272:4 <b>retrieving</b> [1] 7:18 <b>Retro</b> [7] 245:6 253:20 254:13 255:7 256:3,10 258:13 <b>return</b> [4] 150:9 157:23 217:4 291:2 <b>returned</b> [10] 110:15 137:25 138:7 149:11,24 157:7 208:18 242:3 244:23 246:3 <b>returning</b> [1] 138:17 <b>revealed</b> [3] 246:24</p>	<p>247:22 286:22 <b>review</b> [51] 35:4 55:23 57:11 136:24 137:20 148:13 155:5 167:18 177:6 180:3 186:24 187:7 187:16,17,18,23 193:8 193:10,13,16,22,24 194:2 194:7,11 195:21 208:7 210:18 218:23 221:18 246:24 247:21 248:25 250:2,22,23 253:13,15 254:11 263:19,22 266:14 266:21 280:8,9,11 282:22 283:5 291:17 292:15 298:2 <b>reviewed</b> [13] 110:15 137:22 138:5 156:3 157:8 242:3 244:23 246:10 279:11 290:17 298:4 299:2 300:6 <b>reviewer</b> [1] 187:10 <b>reviewers</b> [2] 195:20 218:25 <b>reviewing</b> [3] 193:19 282:24 283:18 <b>reviews</b> [4] 57:10 59:15 194:8 298:14 <b>REVISED</b> [1] 1:1 <b>revolving</b> [4] 12:14 179:22 181:9,12 <b>rewarding</b> [1] 179:21 <b>right</b> [35] 1:9 5:11 8:22 19:18 20:18 31:20 49:10 49:19 51:15 58:18 63:23 74:3 77:6 84:6 99:21 100:24 112:24 116:7 122:15 182:14 191:10 202:1 208:13 218:4,22 219:9 221:25 245:6 249:21 253:19,20 267:3 277:6 288:18 300:19 <b>right-hand</b> [1] 43:2 <b>rightly</b> [5] 247:17 265:13 271:18 283:1 284:9 <b>risk</b> [3] 34:24 116:5 234:2 <b>Ritter</b> [3] 227:16,17,18 <b>RNC</b> [1] 89:3 <b>road</b> [1] 291:12 <b>Robert</b> [1] 227:18 <b>Rogers</b> [1] 64:23 <b>role</b> [37] 8:11 9:18 10:8 14:24 44:19 61:7 69:8 70:14,23 71:5,8,10,14 73:9,10 75:22 82:8 83:25 91:24 92:9 95:20,20 96:2 96:4,8 103:25 104:7,17 104:25 105:2 107:11 108:19 114:4 128:21 130:19 133:11 178:17 <b>roles</b> [2] 15:17 102:11 <b>Rolf</b> [3] 1:9 2:3 4:15 <b>room</b> [1] 237:5 <b>root</b> [15] 197:16,18,25 198:10,13 202:8,12 268:5 268:8 269:4,16 270:24 273:13 276:17,18 <b>Ross</b> [1] 9:4</p>
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Inquiry on Hormone Receptor Testing

<p><b>rule</b> [4] 41:16 74:6 189:19 190:11 <b>ruled</b> [3] 27:10 28:20 73:7 <b>run</b> [2] 73:4 217:18 <b>running</b> [2] 222:11 278:20</p>	<p>205:23 210:21 214:15,21 220:14 222:5 223:1,2 246:3,23 256:4 262:3,3 294:11,21 295:13,24 298:21 299:1 <b>secret</b> [1] 212:24 <b>Secretariat</b> [11] 233:22 234:15 235:4,15 236:6 238:3 240:9 259:21 267:9 267:16 290:18</p>	<p><b>serve</b> [2] 35:10,15 <b>served</b> [7] 78:22,25 79:7 79:10,12 81:2 261:13 <b>serves</b> [1] 162:23 <b>Service</b> [1] 177:7 <b>services</b> [42] 5:20 6:5,23 6:23,25,25 7:4,8,25 8:18 8:23 9:6 11:17 14:19 15:23 24:7 35:14 60:22 61:6 79:4,10,20 80:21 82:9 88:23 89:25 91:14 111:9 113:23 135:16 137:17 140:7,21 143:5 159:20 160:22 162:7,15 179:12 210:15,17 288:18</p>	<p><b>signing</b> [7] 147:3 163:22 164:19 169:25 170:4,8 177:19 <b>similar</b> [4] 103:11 127:1 232:19 236:14 <b>Simmons</b> [7] 1:11 26:7 48:8 280:5,9 281:4 284:15 <b>simply</b> [13] 54:7 58:4 99:4 117:7 139:15 165:23 183:22 184:24 185:19 188:24 189:21 207:4 244:20 <b>simultaneous</b> [1] 78:20 <b>Sinai</b> [18] 116:9,12 136:22 154:23 157:8 158:4,14 187:1 203:7 246:4,5 247:14,15 254:24 255:2 275:9,11 298:8</p>	<p><b>sorry</b> [36] 17:14 80:10 87:22 112:12 122:6 123:22 133:21 140:11 144:2 147:23 165:5 170:18 172:5,19 173:4 173:12,15 176:18 191:14 191:17 199:1 200:20 217:23,25 218:2 221:11 239:21 240:1 242:17,18 253:17,22 274:20 275:3 287:2,5 <b>sort</b> [9] 15:8 17:1 65:17 73:16 80:24 96:9 114:9 236:14 297:7 <b>sorts</b> [4] 15:5 16:21 38:23 105:23 <b>sought</b> [1] 263:5 <b>sound</b> [1] 301:10 <b>spaced</b> [1] 111:18 <b>speak</b> [9] 49:7,7 68:14 92:7 102:3 112:10 164:15 212:23 257:7 <b>speaking</b> [14] 9:21 10:1 12:8 22:22 98:4,11 115:3 115:16 120:25 165:7,10 167:1 232:15 268:19 <b>special</b> [1] 226:21 <b>specialists</b> [2] 161:16 180:17 <b>specific</b> [4] 16:7 117:21 126:18 127:9 <b>specifically</b> [10] 10:3,5 19:19 37:9 60:12 93:3 97:15 200:12 226:20 227:22 <b>specifics</b> [1] 179:13 <b>speculate</b> [1] 19:13 <b>speed</b> [1] 192:4 <b>spent</b> [1] 51:20 <b>spite</b> [1] 226:3 <b>spoke</b> [3] 185:16 239:4 268:6 <b>spoken</b> [5] 12:25 13:25 81:5 176:8 239:23 <b>spring</b> [12] 113:22 140:6 153:25 154:7,18 155:18 156:8 159:1 205:18,20 209:12 232:4 <b>St</b> [9] 78:11 86:11 138:3 177:13 188:4 195:20 205:21 301:7,11 <b>Stacey</b> [1] 1:17 <b>staff</b> [6] 94:3 134:12 179:20,24 181:11 184:14 <b>stage</b> [6] 67:23 156:21 165:8 192:1 260:1 288:4 <b>stages</b> [3] 136:24 155:5 208:7 <b>staining</b> [2] 272:6,14 <b>stakeholder</b> [2] 224:15 224:19 <b>stamp</b> [6] 161:6 210:17 288:20 289:6,14 290:2 <b>stamped</b> [1] 227:10 <b>stand</b> [9] 2:2 117:10 135:18 139:7 149:5 205:1</p>
<p><b>-S-</b></p>				
<p><b>s</b> [2] 285:9 288:22 <b>safe</b> [3] 139:20 219:13,25 <b>safely</b> [1] 139:16 <b>safety</b> [5] 34:23 55:17 56:1 132:24 218:11 <b>samples</b> [9] 116:8,12 133:4 264:11,18 265:2 279:23 280:23 298:7 <b>Sandra</b> [1] 1:8 <b>sandwich</b> [1] 27:9 <b>satisfied</b> [3] 19:4 42:8 185:14 <b>satisfy</b> [1] 138:18 <b>saw</b> [7] 92:3 129:3,12 130:21 148:17 183:3 213:25 <b>says</b> [43] 16:17 24:13 26:9 27:8,12 28:9 31:9 31:14,24 64:7 66:22 127:4,11,14 135:4 137:19 138:6 146:18 149:22 155:7 156:1 160:23 168:1 186:23 189:5,21 194:2 206:4 208:14 210:19 224:14 227:16 228:18 246:2 263:16 271:23 272:14 280:10,22 290:11 297:25 298:22 299:1 <b>scan</b> [1] 27:23 <b>scanner</b> [1] 52:20 <b>scheduled</b> [1] 113:15 <b>Sciences</b> [1] 192:6 <b>scoping</b> [1] 189:11 <b>scratched</b> [4] 203:19,22 205:5,9 <b>screen</b> [11] 23:23 110:23 111:3 123:1 159:13 177:2 202:21 203:20 204:14 215:1 292:3 <b>screening</b> [2] 176:2 183:14 <b>scroll</b> [6] 62:5 80:4 111:12 210:13 271:11 289:16 <b>scrum</b> [1] 69:19 <b>searched</b> [1] 268:21 <b>seated</b> [1] 77:18 <b>second</b> [50] 28:8 60:20 71:3,9 74:4 79:18 121:23 127:2 136:19 140:15 142:16 149:21 150:13 157:23 159:13 160:17 167:18 168:1 169:19 173:5,15,18 175:24 179:10 181:23 187:5,6 187:11,21 189:4 192:9</p>	<p><b>Secretary</b> [4] 9:4,17 234:17 285:22 <b>section</b> [5] 126:9,14 127:11 213:10,16 <b>sector</b> [3] 5:17 11:25 78:19 <b>see</b> [44] 11:19 20:3 25:14 31:8 55:24 80:5,6 92:7 95:19 96:14 98:13 111:16 118:11 126:24 129:14,14 135:22,23 152:22 153:4 153:10 159:2 162:12 164:20 168:22 177:2 178:19 201:20 203:21 204:18 205:8 214:23 215:1 252:4 267:1 271:10 275:24 278:13,21 285:12 288:21 289:11 291:3 298:8 <b>seeing</b> [3] 101:9 165:1 294:7 <b>seek</b> [1] 89:12 <b>seeking</b> [1] 29:12 <b>seemingly</b> [1] 123:19 <b>seldom</b> [1] 163:6 <b>send</b> [7] 38:24 40:4 103:15 128:5 164:25 174:5 240:20 <b>sending</b> [4] 24:8 103:19 178:10 179:3 <b>sends</b> [1] 54:8 <b>senior</b> [11] 90:11 91:7,20 92:17 95:11,25 102:21 105:1,5,12 202:16 <b>sense</b> [19] 65:24 70:8,15 99:18 102:2,6,14 108:18 135:6 143:8 150:6 155:17 172:11 243:16 248:21,23 279:18 284:24 285:8 <b>sensitive</b> [1] 272:10 <b>sent</b> [11] 55:16 56:2 116:12 158:3 171:22 179:9 220:6 235:21 241:5 242:2,14 <b>sentence</b> [15] 28:16 65:3 134:8 135:11 136:16 149:22 169:19 173:18,19 173:22 189:4 253:19 261:6 298:21 299:1 <b>sentiment</b> [1] 32:9 <b>sentiments</b> [1] 33:2 <b>September</b> [5] 177:14 186:19 187:2 188:5 196:6 <b>series</b> [1] 57:5 <b>serious</b> [2] 23:18 183:1 <b>seriously</b> [1] 228:3</p>	<p><b>serve</b> [2] 35:10,15 <b>served</b> [7] 78:22,25 79:7 79:10,12 81:2 261:13 <b>serves</b> [1] 162:23 <b>Service</b> [1] 177:7 <b>services</b> [42] 5:20 6:5,23 6:23,25,25 7:4,8,25 8:18 8:23 9:6 11:17 14:19 15:23 24:7 35:14 60:22 61:6 79:4,10,20 80:21 82:9 88:23 89:25 91:14 111:9 113:23 135:16 137:17 140:7,21 143:5 159:20 160:22 162:7,15 179:12 210:15,17 288:18 <b>serving</b> [1] 90:6 <b>set</b> [2] 38:12 40:25 <b>seven</b> [3] 78:24 126:8 215:20 <b>several</b> [8] 67:25 80:8 112:1 131:2 191:20 192:23 223:22 238:13 <b>share</b> [4] 33:19 34:9,18 37:13 <b>shared</b> [6] 26:23 32:17 125:15 213:3 214:10 228:3 <b>sharing</b> [1] 213:16 <b>sheet</b> [1] 148:10 <b>short</b> [2] 100:1 245:5 <b>short-term</b> [1] 91:24 <b>shortage</b> [5] 182:21 183:1 228:4,16,22 <b>shortly</b> [4] 190:12 202:21 223:9 286:25 <b>shot</b> [1] 202:9 <b>show</b> [3] 112:21 203:20 272:5 <b>shown</b> [1] 30:24 <b>shows</b> [1] 28:5 <b>shut</b> [4] 55:16 56:3 99:25 100:1 <b>side</b> [13] 13:16 16:23 43:2 208:13 217:20,20 219:10 219:19 220:14 221:16,25 222:4 288:19 <b>sign</b> [4] 163:10,18 165:12 190:6 <b>signature</b> [6] 146:17 165:9 168:13 171:21 174:20,22 <b>signatures</b> [1] 146:23 <b>signed</b> [27] 62:6,7 143:9 146:20 147:5 159:25 160:24 163:3,20 168:14 174:13,21 177:8 178:5,6 182:4 233:24 278:23 287:16,20 291:19 295:7 <b>significance</b> [6] 109:21 248:10,15,19 262:5,5 <b>significant</b> [14] 21:22 33:15 45:15 56:4,7 64:17 64:22 72:11 109:18 156:11 228:22 230:10 248:17 260:17 <b>significantly</b> [1] 84:2</p>	<p><b>signing</b> [7] 147:3 163:22 164:19 169:25 170:4,8 177:19 <b>similar</b> [4] 103:11 127:1 232:19 236:14 <b>Simmons</b> [7] 1:11 26:7 48:8 280:5,9 281:4 284:15 <b>simply</b> [13] 54:7 58:4 99:4 117:7 139:15 165:23 183:22 184:24 185:19 188:24 189:21 207:4 244:20 <b>simultaneous</b> [1] 78:20 <b>Sinai</b> [18] 116:9,12 136:22 154:23 157:8 158:4,14 187:1 203:7 246:4,5 247:14,15 254:24 255:2 275:9,11 298:8 <b>single</b> [1] 111:18 <b>singularly</b> [1] 6:21 <b>sit</b> [4] 9:11 71:11 102:22 104:18 <b>siting</b> [1] 103:7 <b>sitting</b> [3] 59:13 81:11 296:8 <b>situ</b> [1] 245:5 <b>situation</b> [8] 25:3 96:24 126:19 127:7 131:23 218:23 232:19 238:7 <b>six</b> [8] 6:12,18 7:1 112:4 123:13 215:19 219:14 237:12 <b>sixth</b> [2] 187:15,22 <b>sixty</b> [1] 82:11 <b>size</b> [1] 8:13 <b>sketch</b> [1] 78:8 <b>skilled</b> [1] 78:14 <b>skip</b> [1] 31:11 <b>slices</b> [1] 272:18 <b>slides</b> [2] 189:9,16 <b>slightly</b> [1] 99:22 <b>small</b> [22] 213:4 260:15 279:15 280:2,3,13,20 281:1,5,17,23,24 282:12 282:14,23 283:3,7,16 284:4,12,13,19 <b>social</b> [1] 81:6 <b>socially</b> [2] 91:3 95:2 <b>Society</b> [2] 1:16 223:7 <b>solicited</b> [1] 228:9 <b>solution</b> [2] 72:24 76:18 <b>someone</b> [5] 32:3 38:21 40:2 55:12 190:4 <b>sometime</b> [1] 68:11 <b>sometimes</b> [3] 127:24 127:25 163:16 <b>somewhat</b> [2] 24:11 164:3 <b>somewhere</b> [5] 62:8 67:13 143:11 237:8,17 <b>soon</b> [3] 28:11 33:13 293:15 <b>sophisticated</b> [1] 206:18</p>	<p><b>sorry</b> [36] 17:14 80:10 87:22 112:12 122:6 123:22 133:21 140:11 144:2 147:23 165:5 170:18 172:5,19 173:4 173:12,15 176:18 191:14 191:17 199:1 200:20 217:23,25 218:2 221:11 239:21 240:1 242:17,18 253:17,22 274:20 275:3 287:2,5 <b>sort</b> [9] 15:8 17:1 65:17 73:16 80:24 96:9 114:9 236:14 297:7 <b>sorts</b> [4] 15:5 16:21 38:23 105:23 <b>sought</b> [1] 263:5 <b>sound</b> [1] 301:10 <b>spaced</b> [1] 111:18 <b>speak</b> [9] 49:7,7 68:14 92:7 102:3 112:10 164:15 212:23 257:7 <b>speaking</b> [14] 9:21 10:1 12:8 22:22 98:4,11 115:3 115:16 120:25 165:7,10 167:1 232:15 268:19 <b>special</b> [1] 226:21 <b>specialists</b> [2] 161:16 180:17 <b>specific</b> [4] 16:7 117:21 126:18 127:9 <b>specifically</b> [10] 10:3,5 19:19 37:9 60:12 93:3 97:15 200:12 226:20 227:22 <b>specifics</b> [1] 179:13 <b>speculate</b> [1] 19:13 <b>speed</b> [1] 192:4 <b>spent</b> [1] 51:20 <b>spite</b> [1] 226:3 <b>spoke</b> [3] 185:16 239:4 268:6 <b>spoken</b> [5] 12:25 13:25 81:5 176:8 239:23 <b>spring</b> [12] 113:22 140:6 153:25 154:7,18 155:18 156:8 159:1 205:18,20 209:12 232:4 <b>St</b> [9] 78:11 86:11 138:3 177:13 188:4 195:20 205:21 301:7,11 <b>Stacey</b> [1] 1:17 <b>staff</b> [6] 94:3 134:12 179:20,24 181:11 184:14 <b>stage</b> [6] 67:23 156:21 165:8 192:1 260:1 288:4 <b>stages</b> [3] 136:24 155:5 208:7 <b>staining</b> [2] 272:6,14 <b>stakeholder</b> [2] 224:15 224:19 <b>stamp</b> [6] 161:6 210:17 288:20 289:6,14 290:2 <b>stamped</b> [1] 227:10 <b>stand</b> [9] 2:2 117:10 135:18 139:7 149:5 205:1</p>

<p>235:11 252:8,11  <b>standard</b> [5] 114:17  115:8,14 125:13,17  <b>standardized</b> [1] 272:19  <b>standards</b> [1] 189:8  <b>standing</b> [3] 117:16  136:17 254:8  <b>stands</b> [2] 233:11 276:2  <b>start</b> [2] 196:1 280:20  <b>start-up</b> [1] 67:24  <b>started</b> [5] 68:11 88:13  187:16 231:6 281:21  <b>starting</b> [1] 262:4  <b>statement</b> [18] 14:2  31:12 34:8 150:23 151:3  151:19 152:2 181:18  199:6 222:13 223:4,6  261:6 263:22 265:22  278:21,25 279:5  <b>statements</b> [2] 29:10  279:10  <b>states</b> [1] 28:23  <b>stating</b> [2] 263:23 265:22  <b>Statistics</b> [1] 78:16  <b>status</b> [12] 18:1 115:15  169:23 194:10,12 254:25  259:5 266:4 272:22  274:10 293:8 298:13  <b>stay</b> [2] 167:25 169:1  <b>stayed</b> [1] 92:12  <b>step</b> [1] 98:15  <b>steps</b> [3] 201:25 229:13  297:24  <b>still</b> [16] 100:3,5 105:18  116:2 117:1,9 132:21  133:12 135:1 193:14  209:6 253:15 254:6  272:12 275:8 277:13  <b>stood</b> [2] 196:15 244:5  <b>stop</b> [1] 48:23  <b>story</b> [7] 33:1 64:23,25  65:4 223:3 278:20,22  <b>strange</b> [2] 235:8 244:6  <b>strategic</b> [2] 15:18 66:20  <b>stressed</b> [1] 223:13  <b>strictly</b> [1] 72:12  <b>strong</b> [3] 11:13 37:5  175:10  <b>strongly</b> [1] 297:8  <b>strongly-worded</b> [3]  170:9 171:20 174:6  <b>struck</b> [2] 99:20 235:8  <b>studies</b> [1] 78:15  <b>style</b> [1] 125:10  <b>sub-specialization</b> [1]  180:1  <b>subdivisions</b> [1] 6:17  <b>subject</b> [7] 127:8 163:12  210:17 233:18 241:24  291:15 293:1  <b>submission</b> [1] 230:22  <b>submit</b> [1] 180:15  <b>submitted</b> [2] 11:18</p>	<p>56:13  <b>subordinates</b> [2] 53:14  53:21  <b>subsequent</b> [4] 25:7  31:3 32:13 255:1  <b>subsequently</b> [5] 82:12  88:21 145:18 147:10  212:3  <b>substantive</b> [1] 100:21  <b>succeeded</b> [1] 60:21  <b>successfully</b> [1] 272:1  <b>such</b> [25] 16:4 40:2 41:25  50:4 54:7 56:19 80:21  97:22 116:25 127:5  134:15 135:5 163:23  170:9 171:20 174:5  175:10 207:15 229:9  234:18 235:14 256:5  276:11 277:11 295:13  <b>sued</b> [2] 222:16 259:16  <b>sufficient</b> [1] 229:14  <b>suggest</b> [7] 5:15 12:16  72:23 84:8 134:24 228:25  229:1  <b>suggested</b> [11] 21:20  27:17 120:16,18,23  123:22 125:2 129:4,23  151:22 228:17  <b>suggesting</b> [8] 44:4  46:20 54:17 109:6 129:9  175:5 247:25 281:9  <b>suggestion</b> [4] 176:1  178:21 181:1 183:13  <b>suggests</b> [2] 189:14  190:4  <b>suit</b> [2] 125:9 151:8  <b>Sullivan</b> [1] 182:11  <b>summer</b> [12] 43:10 48:17  198:20 199:19,20 205:21  235:7 246:16 269:14,22  273:12 276:18  <b>Sunday</b> [3] 159:15,16  164:6  <b>supplied</b> [1] 13:14  <b>supply</b> [3] 145:1,2  229:14  <b>support</b> [2] 6:24 65:16  <b>supportive</b> [1] 32:2  <b>supports</b> [1] 182:15  <b>suppose</b> [4] 27:6 65:24  70:12 218:15  <b>supposed</b> [1] 116:21  <b>Surgery</b> [2] 227:9,15  <b>surgical</b> [1] 228:20  <b>surprise</b> [1] 243:2  <b>surprised</b> [7] 25:14  188:13 215:25 216:7  252:1,4 253:6  <b>surrounding</b> [1] 34:20  <b>Susan</b> [1] 32:8  <b>suspect</b> [3] 123:3 284:14  288:15  <b>sustainability</b> [1]  179:15</p>	<p><b>switching</b> [1] 74:3  <b>sworn</b> [4] 77:22 84:12  86:3 92:22  <b>syndrome</b> [2] 179:22  181:9  <b>system</b> [21] 66:25 199:12  200:7,18 201:14 205:24  206:4,15,16,17,19,20  229:12 271:1,24 272:1,4  272:8,10,11,12  <b>system's</b> [8] 192:21  195:3 196:16 198:17  199:1,3,11 270:1  <b>Systemic</b> [1] 65:11  <b>systems</b> [9] 192:18  202:25 203:24 204:3,20  204:22 205:5 224:25  271:2</p> <hr/> <p style="text-align: center;"><b>-T-</b></p> <p><b>table</b> [8] 2:1 81:11 85:11  85:23 102:22 125:21  232:10 296:8  <b>taking</b> [6] 7:6 71:13  89:14 136:25 181:25  240:19  <b>talks</b> [3] 112:6 152:16  181:9  <b>Tamoxifen</b> [3] 116:4  247:3 250:4  <b>Tansy</b> [15] 87:11,13  103:22 232:7,7 233:16  233:24 235:2,3 240:17  240:24 241:4 267:5  278:15,23  <b>targeted</b> [1] 219:14  <b>Taylor</b> [2] 1:13 288:23  <b>team</b> [1] 228:19  <b>teams</b> [1] 219:16  <b>technical</b> [3] 211:24  273:21 276:11  <b>technicians</b> [1] 226:21  <b>technologist</b> [1] 187:1  <b>technologists</b> [3] 273:6  274:6 275:25  <b>Technology</b> [2] 78:14  79:4  <b>Telegram</b> [2] 144:21  145:1  <b>telling</b> [9] 53:4 144:15  199:22 202:24 214:2,5,9  216:5 240:17  <b>temporarily</b> [1] 91:25  <b>temporary</b> [1] 92:10  <b>ten</b> [5] 79:11,13 81:3 83:8  94:23  <b>tended</b> [1] 127:18  <b>tense</b> [3] 138:9 196:9,9  <b>tenure</b> [12] 6:4 10:5  11:16 60:21 108:22 109:8  111:15 119:2 123:16  151:12 192:24 215:12  <b>Term</b> [1] 59:7  <b>terms</b> [40] 12:2 13:6 14:6  15:1 16:14,25 21:10 30:4</p>	<p>30:9 32:15 38:8 39:18  40:8 43:13,15 45:22 56:8  58:5 80:20 89:6 97:14  103:13 113:24 126:7  130:12 144:3 146:4 151:5  154:19 180:3 198:13  213:23 224:4 231:6 242:7  244:14 277:2 281:20  291:8 296:5  <b>test</b> [12] 112:6 136:20  158:13 221:4,4 223:10  224:21 264:25 271:23  272:2,3 280:23  <b>tested</b> [9] 116:9 148:7  152:19 246:18 247:14  249:3 264:19 265:3,19  <b>testified</b> [1] 41:11  <b>testimony</b> [9] 4:19 6:9  11:11 15:15 21:20 26:10  35:5 56:23 156:18  <b>testing</b> [24] 1:3,14 65:7  66:23 115:25 116:11  133:4 137:22 138:2  187:17 223:14 225:24  234:4 242:1 274:11  275:12,12,17,18,19 276:3  291:16 293:8 301:4  <b>tests</b> [14] 55:15 56:2  64:19 65:1 152:17 154:22  158:3 189:6 221:1 222:5  275:20 279:11 280:11  293:2  <b>text</b> [4] 149:19 212:8  242:6 273:2  <b>thank</b> [28] 6:1 31:13,22  34:13 35:18,21,24 37:20  42:19,25 43:3 68:25  76:22,25 77:13,20 88:1  148:9 159:13 183:12  191:23 231:17,19 232:1  280:9 284:22 288:12  300:24  <b>themselves</b> [3] 138:18  196:1 205:3  <b>Therapies</b> [1] 62:1  <b>therapy</b> [2] 65:11 116:4  <b>there'd</b> [2] 48:22 50:18  <b>thereabouts</b> [1] 236:13  <b>thereafter</b> [1] 190:12  <b>therein</b> [2] 112:5 123:23  <b>they've</b> [4] 226:15,16,19  226:21  <b>thickness</b> [1] 272:17  <b>thinking</b> [3] 92:20  142:23 241:12  <b>thinks</b> [1] 284:19  <b>third</b> [20] 66:22 113:7  132:17 137:19 148:12  149:19 152:16 153:2,8  153:14 167:22 168:23  183:9 194:4 208:16  218:21,22 222:11 239:12  293:10  <b>Thomas</b> [1] 80:7  <b>Thompson</b> [1] 288:22  <b>thought</b> [11] 41:13 60:4  131:19 150:4,6 172:10</p>	<p>224:23 241:12 267:15  278:2 281:23  <b>thoughts</b> [9] 32:4 34:18  35:21 39:10 64:3,4 100:8  277:2 296:17  <b>three</b> [25] 8:2,5 24:19  27:7 40:24 47:18 89:24  111:11,11 116:10 123:10  150:14,20 169:10 171:1  171:1 186:23 187:15  247:4 248:10 249:25  251:3 253:24 254:4  296:23  <b>threshold</b> [2] 255:23  256:1  <b>threw</b> [1] 132:1  <b>through</b> [19] 3:2 27:24  84:20 90:22 113:10,18  121:24 122:15,17 155:1  187:14 210:7 217:18  231:5,8 288:16 289:17  292:2 296:17  <b>throughout</b> [16] 6:1,4  8:25 11:16 22:8,9 25:12  28:14 32:14 34:21 125:13  153:24 211:4 230:12  232:3 253:11  <b>thumbnail</b> [1] 78:8  <b>Thursday</b> [1] 291:14  <b>Tilley</b> [35] 10:23 11:8,11  11:15,23 12:3,12,16,19  12:23 13:7,25 22:17 24:8  24:9 25:5 27:21 28:9,17  31:6 38:22 39:13 40:2  48:17,20 49:2,16 94:13  94:13 123:8 124:7 211:17  212:6,22 278:25  <b>Tilley's</b> [1] 48:15  <b>times</b> [13] 18:23 22:2  34:22 50:24 58:2 98:19  100:20 103:9 127:20  130:9 131:2 136:4 192:23  <b>tissue</b> [6] 133:4 264:11  264:14 272:15,18 279:23  <b>title</b> [9] 61:25 115:22,25  126:11 141:9 162:12,15  234:18 297:23  <b>titled</b> [1] 64:25  <b>titration</b> [1] 272:5  <b>today</b> [19] 57:7 103:2  133:13 156:22 164:9  166:19 170:11,21 171:7  210:2,7 223:3 226:6  248:7,25 256:17 276:23  278:6 291:18  <b>together</b> [2] 73:16 103:9  <b>Tom</b> [7] 2:6 77:4,21,22  79:25 143:15 268:3  <b>tomorrow</b> [2] 291:19  300:19  <b>tone</b> [4] 164:2,13 165:11  165:13  <b>too</b> [10] 11:13 44:19  139:21 150:6 220:23  228:3 236:21 259:9  272:10 290:6  <b>took</b> [18] 26:20 29:4</p>
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Inquiry on Hormone Receptor Testing

<p>47:19 56:17 57:8,14 73:19 74:10,20 82:11 168:19 179:3 228:1 240:21 268:18 279:7 284:24 285:1 <b>top</b> [9] 21:21 43:2 206:3 206:25 217:20 233:15 263:1,16 288:18 <b>topic</b> [7] 64:21 65:21,21 65:22 66:10 143:2 245:16 <b>topics</b> [3] 29:19 39:17 131:7 <b>tops</b> [6] 120:21,22 125:2 131:2,6,11 <b>total</b> [11] 50:13,19 52:2 56:16 242:1,9,14,22 244:14 264:2,10 <b>touch</b> [3] 16:24 28:9,17 <b>touting</b> [1] 64:14 <b>toward</b> [2] 41:11 219:9 <b>towards</b> [1] 183:7 <b>Trade</b> [1] 79:3 <b>trades</b> [2] 78:13,14 <b>traditional</b> [1] 126:21 <b>tragic</b> [2] 35:7 38:12 <b>trained</b> [8] 165:24 169:5 180:14,18,22 181:2,2 228:24 <b>training</b> [1] 226:22 <b>transcribed</b> [1] 301:9 <b>transcript</b> [2] 41:10 301:3 <b>transcripts</b> [1] 225:7 <b>translate</b> [1] 199:2 <b>transpired</b> [1] 29:5 <b>treading</b> [1] 249:12 <b>Treasury</b> [8] 20:3 86:8 175:18 182:10 230:16,21 230:22,24 <b>treat</b> [2] 23:18 99:7 <b>treated</b> [12] 247:3 250:25 251:1,4,21,21 252:5,6 253:3,3,8,8 <b>treating</b> [2] 252:10,11 <b>treatment</b> [16] 62:1 63:4 110:17 131:7 137:12,14 157:11,14 226:19 250:1 254:23 257:19 259:5 279:13 284:2,6 <b>trees</b> [6] 120:22,22 125:2 131:3,6,12 <b>tried</b> [2] 200:5 209:22 <b>triggered</b> [1] 24:23 <b>Trish</b> [2] 210:14,23 <b>true</b> [1] 301:3 <b>trust</b> [3] 22:25 23:8 108:8 <b>trusted</b> [3] 22:11,16 227:1 <b>Trustees</b> [6] 50:5 74:6 74:11,18 75:13 95:5 <b>try</b> [4] 59:8 99:7 181:25 229:17 <b>trying</b> [8] 94:9 99:17,18 108:17 117:2 206:12</p>	<p>248:5 249:13 <b>turn</b> [9] 37:13 140:15 152:13 186:18 245:7 278:23 289:4 291:3 292:23 <b>turn-over</b> [1] 179:20 <b>turned</b> [2] 92:8 166:21 <b>turns</b> [3] 196:5 289:21 289:22 <b>twice</b> [2] 37:21,22 <b>two</b> [53] 5:21 6:6 30:18 30:19,20 39:2,10,10 43:6 47:18 57:9,17 59:14,22 67:7 79:8,15,18 89:23 92:20 111:18 112:3 114:12 146:16 148:22 149:20 157:21 159:16 169:10 182:10 186:16,22 187:10,15 207:7,19 209:12 212:13 214:15 217:5 222:24 223:1 260:2 260:8,20 262:1 272:9 277:5,11,17,21 289:21 289:22 <b>type</b> [10] 105:19 119:3 164:14,15 185:19 193:4 193:16 196:17 203:6 246:1 <b>typed</b> [7] 113:5,7 146:23 146:23,24 267:24 290:21 <b>types</b> [4] 15:9 125:23 160:6 279:17 <b>typical</b> [1] 175:7</p> <hr/> <p style="text-align: center;"><b>-U-</b></p> <p><b>uh-hm</b> [29] 7:10 10:25 11:5 12:6 15:6 16:11 19:2,7,11 20:11 21:13 24:4,17 25:22 29:8 58:13 59:24 67:4 70:20 72:18 73:1,1 74:25 75:5 119:18 193:13 231:12 285:25 289:1 <b>ultimately</b> [5] 17:22 51:5 97:4 168:13 174:21 <b>um-hm</b> [24] 32:6 33:7 38:3 39:4,4 46:5,23 47:5 48:1 50:11,16,21 51:7 52:17,23 53:2,18 55:1,5 132:4 145:4 150:16 153:12 164:11 <b>unable</b> [2] 151:2,18 <b>unaware</b> [1] 239:9 <b>unawares</b> [1] 239:17 <b>under</b> [39] 7:2 36:25 66:20 106:25 121:3 126:13 127:10 132:17,22 134:6,22,23 136:19 141:8 147:19 148:10 152:15 186:22 187:21 207:7 208:16 213:10 217:21 218:21 223:2 245:4,25 245:25 246:23 250:24 251:21 252:5,11 253:3,8 253:15 254:13 261:8 276:13 <b>underlined</b> [7] 192:11 192:13 206:5 208:15</p>	<p>219:12 223:15 227:13 <b>underlining</b> [1] 217:10 <b>underneath</b> [1] 204:23 <b>understand</b> [48] 17:14 35:6 44:4 56:16,20 74:21 83:4 84:22 99:18 106:8 106:18 118:1 121:7 123:9 135:18 137:3 140:25 141:19 151:21 156:7 157:13 158:10 193:17 208:24 209:25 221:3 229:22 234:12 245:18 248:9,15,18 251:4 255:6 255:23 261:2,24,25 262:4 273:22 275:16 276:12 277:16 279:2 283:22 287:10,14 296:22 <b>understood</b> [61] 17:15 36:13 43:14 56:14 84:25 98:11 104:20 106:9 107:2 107:3,6,17 108:4,24 109:4 121:2,4,5 129:16 130:2,4,6 133:10,11 138:12 144:19 153:25 158:12,16 165:13 193:10 193:23 194:6 195:19,24 199:3,5 201:11 203:1 208:24 212:17 214:14,20 229:21 247:12 250:10,21 250:23 251:20 257:15,20 262:8 266:7 267:18 273:19 279:5,22 280:15 282:10 287:8 299:24 <b>underway</b> [1] 193:14 <b>undoubtedly</b> [1] 35:5 <b>unfold</b> [1] 57:5 <b>unfolds</b> [1] 16:15 <b>unfortunately</b> [8] 57:2 118:11 142:22 200:6 203:19 250:24,25 285:12 <b>University</b> [3] 78:15 161:2 227:8 <b>unless</b> [2] 74:16 179:21 <b>unlikely</b> [4] 167:25 169:1 271:25 272:9 <b>unnecessarily</b> [2] 250:6 250:8 <b>unreasonable</b> [1] 169:15 <b>Unreliable</b> [1] 65:1 <b>unsure</b> [1] 27:2 <b>unusual</b> [4] 65:18,23 235:9 243:20 <b>up</b> [71] 9:19 23:21 25:8 27:16,18,19,22 58:21 61:19 63:16 76:18 78:6 91:7 92:2 101:7 110:22 110:23 111:3 117:10,16 122:13,19 123:15,18,24 124:7 128:16,18,23 140:16 142:4,15 145:18 148:11,12 154:6,18 161:12 169:2 183:11 192:3,3 202:20 203:21 204:5 206:3,5,15 209:11 212:8 213:5,9 214:25 229:18 236:10 237:24 238:4 242:7 245:12</p>	<p>252:22 260:9 263:25 264:1,16 279:17 282:18 288:19 289:16,21,22 291:2 <b>update</b> [12] 196:14 234:4 242:1 244:10,14,20,22 245:23 258:3,4 259:2 267:20 <b>updates</b> [5] 106:20 107:16,20,23 194:16 <b>upper</b> [1] 55:18 <b>uppermost</b> [2] 22:3 34:22 <b>upset</b> [5] 84:25 294:25 295:1 296:13,16 <b>usage</b> [1] 134:11 <b>used</b> [9] 39:23 44:10,12 47:17 116:15 131:2 168:23 198:14 202:12 <b>uses</b> [1] 196:9 <b>using</b> [3] 202:8 236:13 272:1 <b>usually</b> [2] 7:2 77:5 <b>utilized</b> [1] 203:7</p> <hr/> <p style="text-align: center;"><b>-V-</b></p> <p><b>vacant</b> [1] 91:21 <b>value</b> [1] 267:21 <b>VANTANA</b> [3] 206:6 206:15,17 <b>variety</b> [3] 9:21 16:3 29:19 <b>various</b> [7] 7:17 10:12 18:16 95:18 136:24 155:5 208:6 <b>vast</b> [3] 35:6 63:11 136:23 <b>vastness</b> [1] 192:4 <b>vein</b> [1] 122:19 <b>Ventana</b> [2] 272:10,11 <b>verbal</b> [3] 82:13 131:18 211:15 <b>verbally</b> [3] 103:14 199:22 212:6 <b>verbatim</b> [2] 208:20 210:7 <b>verses</b> [2] 196:17,19 <b>version</b> [6] 31:3 122:13 126:4 217:6 267:24 292:7 <b>versus</b> [2] 115:8,20 <b>VI</b> [1] 126:9 <b>via</b> [1] 250:14 <b>vice</b> [3] 79:1 179:11 210:16 <b>view</b> [32] 4:23 5:9 13:12 17:3 19:22 22:6 23:18 29:15,23 30:10,14,20 32:16,17 33:9,12 49:2 49:13,19,21 53:12 75:20 110:4 114:8 118:16 123:20 129:7,8 165:25 195:21 248:1 258:3 <b>viewed</b> [4] 75:14 178:13 178:14 248:13</p>	<p><b>views</b> [6] 5:3,5 53:23 228:9 240:14,23 <b>vis</b> [2] 108:21,21 <b>visit</b> [2] 214:15,21 <b>vital</b> [1] 55:20 <b>Vivian</b> [1] 8:8 <b>voice</b> [1] 287:2 <b>volume</b> [3] 139:10,17 198:5 <b>voluntarily</b> [1] 58:7 <b>volunteer</b> [1] 134:18 <b>VP</b> [1] 210:15 <b>VPs</b> [1] 40:2</p> <hr/> <p style="text-align: center;"><b>-W-</b></p> <p><b>wait</b> [3] 54:13,18 173:12 <b>waiting</b> [2] 118:12 229:8 <b>wake</b> [1] 31:6 <b>wanting</b> [2] 54:7,15 <b>wants</b> [1] 241:5 <b>warn</b> [1] 177:21 <b>warrant</b> [1] 6:17 <b>watch</b> [1] 154:18 <b>watching</b> [1] 204:13 <b>ways</b> [1] 35:8 <b>weak</b> [1] 272:5 <b>website</b> [1] 209:18 <b>week</b> [15] 36:9,10 82:7 82:19,22 83:8 91:15,16 92:20 112:2 132:16 202:18 230:18 294:11 295:9 <b>weekly</b> [1] 12:9 <b>weeks</b> [7] 68:1,4 121:13 135:14 139:22 171:1 198:3 <b>Wegrynowski</b> [3] 210:14,24 215:13 <b>weighing</b> [1] 231:9 <b>welcomed</b> [1] 5:22 <b>Western</b> [1] 1:17 <b>whereas</b> [1] 142:16 <b>whole</b> [7] 8:25 53:23 59:21 65:23 151:17 216:19 275:20 <b>widely</b> [1] 25:15 <b>wider</b> [1] 276:5 <b>Williams</b> [2] 179:11 210:14 <b>Williams'</b> [1] 30:17 <b>willingly</b> [1] 10:7 <b>Wiseman</b> [5] 9:4,16,25 10:6,17 <b>wish</b> [1] 217:11 <b>wished</b> [3] 27:25 29:23 266:16 <b>wishes</b> [1] 61:8 <b>within</b> [55] 24:10 50:18 51:10 52:3,5 70:24,24 72:9,11 76:10 82:19,22 83:8,23,24 84:3 85:13 85:17 86:14 90:7 91:1</p>
--	---	--	--	--

<p>92:20 94:16 95:11,23 96:1,19,20,23 97:16,23 102:11 103:10 104:5,15 105:25 106:4,5 120:14 123:15 133:13 139:14 143:4 162:25 163:8 175:18 193:19 194:24 195:2 200:13 202:9 245:21 250:20 261:1 267:14 <b>without</b> [13] 40:3 101:9 164:25 185:12 237:10 238:4 240:1,2 266:25 269:22 294:7,23 296:24 <b>witness</b> [5] 77:2,20 282:14 284:18 291:11 <b>wits</b> [1] 201:11 <b>women</b> [6] 67:15 247:4 254:4,19,24 293:7 <b>wonder</b> [4] 23:21 29:14 33:25 213:17 <b>wondered</b> [2] 171:19 276:24 <b>wondering</b> [1] 5:12 <b>word</b> [5] 54:6 64:16 116:16 199:1 218:4 <b>wording</b> [5] 53:25 148:14 150:1 213:15 290:6 <b>words</b> [3] 130:16 202:8 206:19 <b>worked</b> [9] 78:16,18 101:23 104:1,3 141:8 162:4,9,17 <b>works</b> [1] 123:16 <b>write</b> [3] 164:14 175:8 223:24 <b>writer</b> [1] 126:20 <b>writers</b> [1] 127:4 <b>writes</b> [3] 143:16 233:20 291:17 <b>writing</b> [13] 125:25 126:2 126:9 129:13 170:9 171:20 175:10 183:21,23 197:20 199:18 228:15 229:10 <b>written</b> [28] 119:9 132:11 139:5 154:1 165:1 171:5 207:2 208:21 210:14 217:19 218:23 219:10,11 219:18,23 220:15,23 221:15,25 222:4,12 223:17,20 224:1,7 254:14 266:21 275:24 <b>wrong</b> [7] 54:8 55:22 97:25 113:13 117:16 138:9 249:22 <b>wrongly</b> [5] 247:17 265:13 271:18 283:2 284:9 <b>wrote</b> [6] 128:17 168:23 204:20,22,23 271:19</p> <hr/> <p style="text-align: center;"><b>-X-</b></p> <hr/> <p><b>X</b> [2] 52:2,3</p>	<hr/> <p style="text-align: center;"><b>-Y-</b></p> <hr/> <p><b>year</b> [11] 20:13,19,20 52:4,15 60:1 86:16 113:13 169:10 288:7 297:5 <b>years</b> [14] 27:7 37:7 40:24 47:18,18 57:9 68:5 78:17,23,25 79:8 81:3 94:24 254:17 <b>yesterday</b> [20] 4:19 25:19 26:8 27:14 28:1 29:2,10 30:3 32:21 37:22 41:3 42:14 61:17 118:4 156:19 176:16,18,21 281:12,19 <b>yet</b> [2] 191:4 269:21 <b>yourself</b> [13] 38:19 56:19 113:8 127:5 159:25 171:17 218:16 227:7 233:17 267:5 278:16 288:6,15 <b>Youth</b> [1] 7:3</p> <hr/> <p style="text-align: center;"><b>-Z-</b></p> <hr/> <p><b>zero</b> [1] 254:25</p>			
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