

<p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">APRIL 10, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. . . . . Commission Co-counsel Sandra Chaytor, Q.C. . . . . Commission Co-counsel Mandy Woodland . . . . . Commission Co-counsel</p> <p>Rolf Pritchard/Jenny Chai . . . . . Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury . . . . . Doctors Kara Laing et al</p> <p>Daniel Simmons . . . . . Eastern Regional Integrated . . . . . Health Authority</p> <p>Pamela Taylor. . . . . Members of the Breast Cancer . . . . . Testing Class Action</p> <p>Mark Pike . . . . . NL Medical Association Jennifer Newbury . . . . . Canadian Cancer Society (NL Division) Stacey O’Dea . . . . . Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBITS P-0200 THROUGH P-0285 . . . . . Pg. 61</p>
<p style="text-align: center;">TABLE OF CONTENTS</p> <p>MR. TOM OSBORNE - RESUMES THE STAND</p> <p>Examination by Ms. Pamela Taylor . . . . . Pgs. 4 - 13 Examination by Mr. Rolf Pritchard . . . . . Pgs. 13 - 25 Re-examination by Bernard Coffey, Q.C. . . . . Pgs. 25 - 61</p> <p>MR. ROSS WISEMAN - SWORN</p> <p>Examination by Ms. Sandra Chaytor . . . . . Pgs. 61 -</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER: 2 Q. Good morning. Please be seated. Ms. Taylor? 3 MR. TOM OSBORNE, EXAMINATION BY MS. PAMELA TAYLOR 4 MS. TAYLOR: 5 Q. Good morning, Madam Commissioner. Hello, Mr. 6 Osborne. 7 MR. OSBORNE: 8 A. Good morning. 9 MS. TAYLOR: 10 Q. Good morning. My name is Pam Taylor. I’m 11 here on behalf of the breast cancer testing 12 class action group. Now, I just have a couple 13 of questions for you. I’m going to take you 14 back to Exhibit P-0314. And I’d ask the 15 Registrar if she could please bring that up? 16 Page 10, actually. Now, this is the briefing 17 note from the November 23rd, 2006 meeting that 18 you had with the representatives from Eastern 19 Health and I think some people from your own 20 Department? 21 MR. OSBORNE: 22 A. Yes. 23 MS. TAYLOR: 24 Q. Do you want me to give you a minute to find it 25 there or are you -</p>

Page 5

1 MR. OSBORNE:  
 2 A. No, that's fine, I'll read it on the screen.  
 3 MS. TAYLOR:  
 4 Q. Okay. Right, now before I ask you a question  
 5 on that I just want to make sure, what was  
 6 your understanding about what information was  
 7 available about deceased patients at that  
 8 point, what information was conveyed to you  
 9 about deceased patients?  
 10 MR. OSBORNE:  
 11 A. As I recall, that 101 tests had been sent to  
 12 Mount Sinai and received back, there were 73  
 13 that had not been sent or received and that  
 14 none of those 101 or 73 had been reviewed by  
 15 Eastern Health, but there were two that had  
 16 been sent, received and reviewed at the  
 17 request of families.  
 18 MS. TAYLOR:  
 19 Q. Okay. What was your understanding with  
 20 respect to that information, information  
 21 available on deceased patients, what was your  
 22 understanding as to what information would be  
 23 released in the media briefing in the press  
 24 conference in December of '06?  
 25 MR. OSBORNE:

Page 6

1 A. I understood that they could not release any  
 2 information regarding testing as they had not  
 3 done testing or reviews, but that the total  
 4 number of the deceased would be part of their  
 5 media and technical briefing.  
 6 MS. TAYLOR:  
 7 Q. So they would release information as to the  
 8 number of people that were deceased, okay.  
 9 MR. OSBORNE:  
 10 A. Yes. Well, I guess to be clear, this was a  
 11 briefing for me on the numbers and to advise  
 12 myself and the Department as to what they were  
 13 going to be releasing to the media and through  
 14 the technical briefing. At no time during  
 15 that meeting on November 23rd, the briefing,  
 16 did they indicate that the numbers that were  
 17 on the briefing sheet would not be released  
 18 and at no time was there any request given  
 19 that any of the information not be released.  
 20 So it would have been my understanding that,  
 21 you know, what was contained on the sheet  
 22 would have been released during the media and  
 23 technical briefing.  
 24 MS. TAYLOR:  
 25 Q. Okay. Including the fact that 101 deceased

Page 7

1 patients had, at that point, been retested,  
 2 even if their results hadn't been--even if  
 3 those results hadn't been reviewed, the 101  
 4 deceased patients, the fact that test results  
 5 were back, that information would be released?  
 6 MR. OSBORNE:  
 7 A. Certainly was my anticipation that that  
 8 information would be released.  
 9 MS. TAYLOR:  
 10 Q. And in your testimony yesterday you made  
 11 comment about that meeting and that you had  
 12 said something along the lines of present what  
 13 we have to the media and get the rest of the  
 14 information later, but present what we have?  
 15 MR. OSBORNE:  
 16 A. Yes, we -  
 17 MS. TAYLOR:  
 18 Q. So you had assumed that would be released?  
 19 MR. OSBORNE:  
 20 A. Yes. And I mean, there was no consensus  
 21 reached on doing the other testing, but I  
 22 made, I made my wish clear, that I wanted to  
 23 see that tested. There was argument back and  
 24 forth as to where the time and resources were  
 25 better spent, so I understood both sides of

Page 8

1 the argument, the argument I was making and  
 2 the argument they were making, but we hadn't  
 3 reached a final consensus on that point.  
 4 MS. TAYLOR:  
 5 Q. But I understood that the argument or the  
 6 words back and forth was with respect to the  
 7 reviewing of test results, not necessarily  
 8 that test results hadn't been gotten back?  
 9 MR. OSBORNE:  
 10 A. No, you're absolutely correct.  
 11 MS. TAYLOR:  
 12 Q. Okay. Now, do you know what information, if  
 13 any, was released about deceased patients in  
 14 December of '06?  
 15 MR. OSBORNE:  
 16 A. I now know that there was no information  
 17 released.  
 18 MS. TAYLOR:  
 19 Q. None?  
 20 MR. OSBORNE:  
 21 A. Well, that's my understanding, yes.  
 22 MS. TAYLOR:  
 23 Q. Okay. If I can take you to Exhibit P-0184,  
 24 page 11? Now, this is information that was  
 25 prepared with respect to that briefing. I'm

Page 9

1 assuming it's information that would have been  
 2 prepared by people at Eastern Health.  
 3 Question 18 at the bottom of the page. Now,  
 4 it says, "Did you retest the deceased? Would  
 5 you retest the deceased?" Again, I think,  
 6 these are questions that were in anticipation  
 7 of what might be asked. And the answer, "Our  
 8 focus has been on addressing those patients  
 9 who could be helped by additional treatment,  
 10 so we did not retest individuals who had  
 11 passed away. However, we would do so upon  
 12 request of the family members." Now, does  
 13 that match what you understood in terms of the  
 14 information that you were given on November  
 15 23rd, '06?  
 16 MR. OSBORNE:  
 17 A. Well, no, the information we were given was  
 18 that 100 had been retested by Mount Sinai but  
 19 not reviewed by the tumor panel at Eastern  
 20 Health.  
 21 MS. TAYLOR:  
 22 Q. Okay. And were you ever given any reason or  
 23 explanation or are you aware of any reason or  
 24 explanation as to why the information was  
 25 different from what you understood was going

Page 10

1 to be released?  
 2 MR. OSBORNE:  
 3 A. No. And again, I mean, my belief was that the  
 4 information was going to be released. I read  
 5 the news release and regrettably at this point  
 6 had not read in detail the 35 pages of  
 7 information they were going to be providing  
 8 through the media and technical briefing. It  
 9 was about a month after their media and  
 10 technical briefing that I was moved to the  
 11 Department of Justice and I, upon discovering  
 12 that not all the information was released, I  
 13 had not--I mean, I was in a different  
 14 department, so I had not gone back to ask  
 15 Eastern Health why the information was not  
 16 released.  
 17 MS. TAYLOR:  
 18 Q. And you didn't ask anybody who had been in  
 19 your former department?  
 20 MR. OSBORNE:  
 21 A. No. It was within days of the information  
 22 being discovered there was an inquiry called.  
 23 We had discussed at the Cabinet table that we  
 24 were going to be calling an inquiry and, you  
 25 know, within a day or two. So, no, I didn't.

Page 11

1 You know, I knew that the information would be  
 2 discussed at length or the reasons for that  
 3 would be discovered at the inquiry.  
 4 MS. TAYLOR:  
 5 Q. And at that Cabinet meeting I think the  
 6 presentation was done by your former Deputy  
 7 Minister, John Abbott?  
 8 MR. OSBORNE:  
 9 A. That's correct.  
 10 MS. TAYLOR:  
 11 Q. And there was no discussions with him at that  
 12 time about that information or what you  
 13 understood would have been released in  
 14 December?  
 15 MR. OSBORNE:  
 16 A. It may, it may very well have been discussed  
 17 at Cabinet. I wasn't--because of the August  
 18 18th briefing note I was not very focused at  
 19 that meeting, to be quite frank.  
 20 MS. TAYLOR:  
 21 Q. And you said that at the end of the meeting  
 22 you had some discussion with the Premier on  
 23 the issue of not having seen the briefing  
 24 note?  
 25 MR. OSBORNE:

Page 12

1 A. That's correct.  
 2 MS. TAYLOR:  
 3 Q. Did you have any discussion with him at that  
 4 time about numbers or differences in  
 5 information in terms of what you understood  
 6 would have been released versus what was  
 7 released? Because this, around that time, in  
 8 May of '07, that was, you're, I would think,  
 9 aware, receiving a fair bit of attention in  
 10 the media?  
 11 MR. OSBORNE:  
 12 A. Yes. No, the only issue discussed with the  
 13 Premier was whether or not I had seen the  
 14 August 18th briefing note. And I think  
 15 because of the fact I was so upset, on  
 16 reflection now, I perhaps should have had that  
 17 discussion even with him later that day or the  
 18 following day because clearly it added to the  
 19 tone of the discussion I had. But the only  
 20 issue we discussed was whether or not I had  
 21 seen that note.  
 22 MS. TAYLOR:  
 23 Q. Okay. That's all the questions I have, Mr.  
 24 Osborne.  
 25 MR. OSBORNE:

1 A. Thank you.  
 2 MS. TAYLOR:  
 3 Q. Thank you.  
 4 THE COMMISSIONER:  
 5 Q. Thank you. Mr. Pritchard?  
 6 MR. TOM OSBORNE, CROSS-EXAMINATION BY MR. ROLF PRITCHARD  
 7 MR. PRITCHARD:  
 8 Q. Good morning, Mr. Osborne.  
 9 MR. OSBORNE:  
 10 A. Good morning.  
 11 MR. PRITCHARD:  
 12 Q. Mr. Osborne, in the course of your testimony  
 13 you've related to us how when you first became  
 14 Minister, you had a series of briefings and a  
 15 book of briefing notes that were provided to  
 16 you. And I think you were asked what you  
 17 recall about the different, the briefings that  
 18 you received. And was there very much that  
 19 you're able to recall about the particular  
 20 issue of ER/PR when you were briefed at that  
 21 particular time?  
 22 MR. OSBORNE:  
 23 A. Only the fact that it was one of several  
 24 briefings--or briefing notes within a larger  
 25 package of briefing notes that was presented

1 people at Eastern Health, was that a thought  
 2 that ever occurred to you?  
 3 MR. OSBORNE:  
 4 A. Conflict of interest from the people at  
 5 Eastern Health?  
 6 MR. PRITCHARD:  
 7 Q. Yes, in the sense that you're being briefed by  
 8 the people who, to some greater or lesser  
 9 degree, may have been involved in the  
 10 circumstances that lead to this Inquiry?  
 11 MR. OSBORNE:  
 12 A. No. I took the individuals at Eastern Health  
 13 at face value. And in fact, I had great  
 14 confidence in them because of the fact that,  
 15 you know, they self reported this issue, they  
 16 sent the original samples to Mount Sinai. And  
 17 even though it was going to be an issue of  
 18 great controversy, that wasn't a factor in  
 19 their decision to do the right thing and send  
 20 these tissue samples to Mount Sinai for  
 21 retesting. So I would have absolutely no  
 22 reason to question their ethics at all.  
 23 MR. PRITCHARD:  
 24 Q. Right. And I think in your evidence you  
 25 indicated that you were Minister for about ten

1 in preparation for the House of Assembly. And  
 2 I read those briefing notes and then had a  
 3 verbal briefing on each of the briefing notes.  
 4 MR. PRITCHARD:  
 5 Q. Sure. And so in the course of that briefing,  
 6 then, there wasn't a separate briefing for  
 7 ER/PR, it wasn't presented as an issue that  
 8 perhaps was more on the front burner at that  
 9 particular time when those briefings were  
 10 given to you?  
 11 MR. OSBORNE:  
 12 A. No, there was no more highlight of that  
 13 briefing note than any other briefing note  
 14 that was in the briefing book.  
 15 MR. PRITCHARD:  
 16 Q. Okay. And as you became familiar with this  
 17 issue and we move on from the time that you  
 18 first became the Minister of Health and  
 19 Community Services and you have occasion to  
 20 meet with the people at Health and Community  
 21 Services and as well people at Eastern Health  
 22 and take information and be briefed, were you  
 23 ever concerned about the issue of conflict of  
 24 interest in terms of any briefings or  
 25 information that you were given from the

1 months?  
 2 MR. OSBORNE:  
 3 A. That's correct.  
 4 MR. PRITCHARD:  
 5 Q. So in terms of your term as Minister, these  
 6 events that we've talked about that took place  
 7 in November and December of 2006 or well into  
 8 that ten months, at that point now, November  
 9 and December of 2006, just putting the ER/PR  
 10 issue aside for a moment, had officials from  
 11 Eastern Health ever done anything or given you  
 12 any reason not to trust them?  
 13 MR. OSBORNE:  
 14 A. Absolutely not. You know, in addition to  
 15 believing they were doing the right things for  
 16 the right reasons, to help patients and ensure  
 17 patients receive the proper treatment once the  
 18 problem was discovered. I mean, outside of  
 19 how the issue of public disclosure was handled  
 20 initially and everything else I thought they  
 21 were doing was proper management, the measures  
 22 they were putting in place, everything that  
 23 they were doing to insure that the lab was to  
 24 be considered a Centre of Excellence for  
 25 cancer treatment, all of the measures they

Page 17

1 were putting in place that I was being told  
 2 about along the way to insure that public  
 3 confidence was restored, I had absolutely no  
 4 reason to question.  
 5 MR. PRITCHARD:  
 6 Q. Okay. And in terms of your own staff in the  
 7 Department of Health and Community Services,  
 8 did the issue that they might be in a conflict  
 9 of interest in terms of reporting this issue  
 10 to you and what happened, did that ever occur  
 11 to you?  
 12 MR. OSBORNE:  
 13 A. No. I mean, I have to say, John Abbott, I  
 14 felt was a good Deputy, Moira Hennessey, a  
 15 good ADM. And you know, outside of the issue  
 16 of the August 18th note and not being informed  
 17 about that, I'm not aware of--well, actually,  
 18 there were three notes, I should correct that.  
 19 But I had no reason to doubt the staff at the  
 20 Department.  
 21 MR. PRITCHARD:  
 22 Q. Okay. And on the subject of those notes, you  
 23 mentioned that there were three notes, I  
 24 gather, that left the Department that you did  
 25 not see. Am I correct in understanding that

Page 18

1 only one of those notes concerned the ER/PR  
 2 issue?  
 3 MR. OSBORNE:  
 4 A. That is correct.  
 5 MR. PRITCHARD:  
 6 Q. Now, I want to ask you a question about the  
 7 November 23rd briefing. And I wonder if we  
 8 could have the last exhibit up again, please?  
 9 It was--it's 0314, page 10, please? All  
 10 right. Now, Mr. Osborne, you have that in  
 11 front of you there? And this is, of course,  
 12 the copy of the briefing note that has your  
 13 personal notations on it?  
 14 MR. OSBORNE:  
 15 A. Yes.  
 16 MR. PRITCHARD:  
 17 Q. And I wanted to ask a question about one of  
 18 the notations. One of the notations on the  
 19 page towards the bottom is a three and a four  
 20 percent that appears to be scratched out,  
 21 circled, and then moving across the right of  
 22 the page it says, "Within the rate of error."  
 23 Can you tell me what was happening at that  
 24 point in the meeting or what drove you to put  
 25 that notation on your page?

Page 19

1 MR. OSBORNE:  
 2 A. I think in the confusion of the information  
 3 coming and because of the rate of error being  
 4 on mind, that should be within margin of  
 5 error, I believe. But the three to four  
 6 percent, I can't recall where that came from.  
 7 I wouldn't have added the numbers or come up  
 8 with that number at the meeting because, you  
 9 know, I was very involved in the discussion  
 10 and just simply making a couple of notes as we  
 11 were going. But the three or four percent, to  
 12 the best of my understanding, was the 117 or  
 13 104, whichever at the time that note was made  
 14 would have been the percentage of the total  
 15 number of patients tested. Going back and  
 16 doing the math now, the twenty-seven, sixty I  
 17 think was the total number and 104 into that  
 18 would work out to somewhere around three or  
 19 four percent, I think.  
 20 MR. PRITCHARD:  
 21 Q. Okay. And without commenting on the validity  
 22 of that number, that's your understanding of  
 23 what that three or four percent was, is that  
 24 correct?  
 25 MR. OSBORNE:

Page 20

1 A. That's correct.  
 2 MR. PRITCHARD:  
 3 Q. Okay. And just to be clear now, is this sort  
 4 of, you know, you were sort of crunching the  
 5 numbers in your head or do you recollect this  
 6 was something that was being discussed?  
 7 MR. OSBORNE:  
 8 A. It must have been discussed. I don't  
 9 recollect the number, you know, I don't  
 10 recollect doing any calculations in my head  
 11 that day. Again, where the three to four  
 12 percent came from, I'm not entirely sure.  
 13 But, you know, I would--I generally don't like  
 14 using numbers unless we're absolutely certain,  
 15 for example, the numbers of patients, because  
 16 if I were asked, I would have just said that  
 17 it was within the margin of error. But there  
 18 wasn't a lot of talk at the meeting of numbers  
 19 or total numbers, percentages of numbers, if  
 20 that's what you're asking.  
 21 MR. PRITCHARD:  
 22 Q. Okay. And just to be clear now, you've  
 23 described to us how there was a discussion  
 24 between Darrell Hynes and Dr. Laing about the-  
 25 -what to do with the statistics regarding the

Page 21

1 deceased and I think you related to us that it  
 2 was very much your desire that there should be  
 3 a complete set of statistics regarding the  
 4 deceased and it was, I gather, communicated to  
 5 you that that hadn't been done yet, is that  
 6 correct?  
 7 MR. OSBORNE:  
 8 A. That's is correct.  
 9 MR. PRITCHARD:  
 10 Q. Okay. And was it your understanding that to  
 11 complete those calculations would have further  
 12 delayed any sort of announcement or press  
 13 conference that was contemplated?  
 14 MR. OSBORNE:  
 15 A. Yes, absolutely.  
 16 MR. PRITCHARD:  
 17 Q. Okay.  
 18 MR. OSBORNE:  
 19 A. You know, my desire was that they get the  
 20 information that they had available to them at  
 21 the time released to the general public as  
 22 quickly as possible and go back and within an  
 23 acceptable period of time to determine whether  
 24 any of the individuals who were currently  
 25 deceased would have had benefit from treatment

Page 22

1 were they still alive.  
 2 MR. PRITCHARD:  
 3 Q. Now, you mentioned that you relied on your  
 4 briefing notes to a large extent. And I just  
 5 want to be clear, though, now, you would have  
 6 had face-to-face briefings from your officials  
 7 and from time to time people from Eastern  
 8 Health, is that correct?  
 9 MR. OSBORNE:  
 10 A. That is correct.  
 11 MR. PRITCHARD:  
 12 Q. So you would have relied on both face-to-face  
 13 meetings or briefings, in-person briefings as  
 14 well as your briefing notes?  
 15 MR. OSBORNE:  
 16 A. Yes.  
 17 MR. PRITCHARD:  
 18 Q. Okay. Now, in the case of the August 18th,  
 19 2006 memo which you've indicated you did not  
 20 see, did you ever receive a face-to-face  
 21 briefing on the information, the statistical  
 22 information that was in that briefing note?  
 23 MR. OSBORNE:  
 24 A. No.  
 25 MR. PRITCHARD:

Page 23

1 Q. Now, yesterday you were being asked some  
 2 questions about the August 18th, 2006 note.  
 3 And you were asked about that note and whether  
 4 in the normal course of events Moira Hennessey  
 5 or John Abbott would have approved that note  
 6 before it left the Department. And you were  
 7 further asked if you were aware of any  
 8 difficulty in obtaining the statistical  
 9 information that was in that briefing note. I  
 10 believe Mr. Simmons asked you those questions.  
 11 Now, would I be correct in stating that  
 12 whether or not that was approved by Ms.  
 13 Hennessey or the Department of Health and  
 14 Community Services or, indeed, whether it was  
 15 approved by Cabinet Secretariat, you have no  
 16 personal knowledge of that, do you?  
 17 MR. OSBORNE:  
 18 A. No, I had no personal knowledge of the August  
 19 18th note until May of 2007. Generally  
 20 speaking, notes that go to Central Agencies  
 21 have to be approved by somebody in the  
 22 Department prior to leaving. Whether that was  
 23 the case in regards to the August 18th note or  
 24 not, I cannot say because I wasn't involved or  
 25 hadn't received the notes and I'm not sure,

Page 24

1 you know, if there was any approval within the  
 2 Department itself prior to that note leaving.  
 3 MR. PRITCHARD:  
 4 Q. Okay. And indeed in terms of whether the  
 5 request or the desire to have that note  
 6 emanated from the Department or Cabinet  
 7 Secretariat, you're not aware of that? You  
 8 are in hindsight, but at the time you didn't  
 9 know, did you?  
 10 MR. OSBORNE:  
 11 A. No, I did not.  
 12 MR. PRITCHARD:  
 13 Q. Mr. Osborne, you've answered questions for  
 14 several days now and so my last question to  
 15 you is if there's anything that you would like  
 16 to say?  
 17 MR. OSBORNE:  
 18 A. Well, yes, I guess just to say to Madam  
 19 Commissioner and to the Commission co-counsel  
 20 and all involved, first of all, I'm thankful  
 21 for the opportunity to provide my evidence.  
 22 And it's certainly my hope that the evidence  
 23 that I've provided will help in finding the  
 24 reasons that this unfolded as it did. And  
 25 it's certainly my wish for patients and the

1 families of patients that they find the  
 2 answers they're looking for and that through  
 3 the findings of this Commission and Inquiry  
 4 that perhaps we can insure that this type of  
 5 painful event never happens again.

6 MR. PRITCHARD:

7 Q. Thank you, Mr. Osborne, those are all my  
 8 questions.

9 MR. OSBORNE:

10 A. Thank you.

11 THE COMMISSIONER:

12 Q. Mr. Coffey, do you have anything arising?

13 COFFEY, Q.C.:

14 Q. I do.

15 MR. TOM OSBORNE, RE-EXAMINATION BY BERNARD COFFEY, Q.C.

16 COFFEY, Q.C.:

17 Q. Mr. Osborne, if I could, please, I'd just like  
 18 to clarify some points. You did, I believe,  
 19 in responding to some questions by counsel in  
 20 the room just, in fact, just now for Mr.  
 21 Pritchard, made reference to the fact that  
 22 from your perspective Eastern Health had sort  
 23 of self reported, I think is the word you  
 24 used, phrase you used?

25 MR. OSBORNE:

1 A. Yes.

2 COFFEY, Q.C.:

3 Q. And I think yesterday you said, or put that in  
 4 the context of they had self reported despite  
 5 the fact that they understood they'd likely  
 6 suffer criticism?

7 MR. OSBORNE:

8 A. That was my understanding that, you know,  
 9 they--I mean, obviously if there were errors  
 10 found on testing of breast cancer, eventually  
 11 that was going to lead to criticism for  
 12 Eastern Health. But despite that, I mean,  
 13 that didn't factor in, my understanding upon  
 14 first arriving at the Department, that had  
 15 never factored into the decision by Eastern  
 16 Health to send the samples and have them  
 17 retested.

18 COFFEY, Q.C.:

19 Q. Who was it that -- do you recall who it was  
 20 that was speaking to you about that idea, that  
 21 aspect of the matter, who brought that sort of  
 22 notion or thought to your attention?

23 MR. OSBORNE:

24 A. I don't recall, other than the fact that that  
 25 was what I had understood, and, I mean,

1 whether I had gotten that notion from the  
 2 Department in the way that they'd explained  
 3 the process, or whether I got it from Eastern  
 4 Health and the way that they had explained the  
 5 process, but the sense that I got was that  
 6 Eastern Health made a sample -- or retested a  
 7 small number of samples, discovered that, in  
 8 fact, there could be a problem, and  
 9 immediately moved to determine whether or not  
 10 there was a problem in the best interest of  
 11 patients.

12 COFFEY, Q.C.:

13 Q. So in terms of -- at the time of your sort of  
 14 introduction to the subject matter when you  
 15 took over as Minister, whether from your  
 16 departmental officials or from Eastern Health,  
 17 or perhaps from both, you got the  
 18 understanding you've just described?

19 MR. OSBORNE:

20 A. Yes, well, I would have asked -- initially my  
 21 understanding prior to becoming Minister, my  
 22 only knowledge really of the issue was the  
 23 fact that it had been talked about in the  
 24 media as people were upset that they had found  
 25 out through the media instead of finding out

1 directly from Eastern Health. So I had asked  
 2 some questions how did this happen, you know,  
 3 give me a brief understanding. Even though I  
 4 was operating from March of '06 onward, I did  
 5 want to get some understanding of how this  
 6 transpired.

7 COFFEY, Q.C.:

8 Q. Sure. That aspect of the matter I'd like to  
 9 focus on is to suggest that, well -- to have  
 10 it suggested to you, well, Eastern Health  
 11 discovered a problem, initially realized that  
 12 the results of any further investigation might  
 13 reflect negatively upon Eastern Health, and  
 14 despite that potential, they went ahead,  
 15 anyway. That was what you had been given to  
 16 understand. What I'm asking about is this on  
 17 that point, was there ever any suggestion that  
 18 they really ever had any choice? Because to  
 19 suggest that, well, I discover "A" and then I  
 20 go ahead and investigate "B", "C", "D",  
 21 despite the fact in doing so I might find out  
 22 things that could subject me to criticism in  
 23 doing "B", "C", "D", suggests somehow that  
 24 there was a choice, and I just want to be  
 25 clear on this -- the Commissioner to be clear

Page 29

1 on this. Was it ever suggested that they came  
 2 to a fork in the road and they had to decide  
 3 whether they're going to go down the full  
 4 reinvestigation route?  
 5 MR. OSBORNE:  
 6 A. No, and let me clarify. You know, I don't  
 7 think those words or that notion was ever  
 8 discussed by either officials or Eastern  
 9 Health. It was just that it was explained to  
 10 me they had discovered a problem and  
 11 immediately self-reported. So my notion --  
 12 what I had explained was my own understanding  
 13 that they had done the right thing, and even -  
 14 - my understanding, even though they knew this  
 15 was going to bring criticism, they had done  
 16 the right thing, they did the right thing for  
 17 the right reasons, because it was in the  
 18 patients best interest.  
 19 COFFEY, Q.C.:  
 20 Q. But that suggests that, like, someone thought  
 21 about perhaps doing the wrong -- you know, the  
 22 potential to do the wrong thing.  
 23 MR. OSBORNE:  
 24 A. That notion was never ever discussed.  
 25 COFFEY, Q.C.:

Page 30

1 Q. Okay.  
 2 MR. OSBORNE:  
 3 A. Never discussed. It was just that I had taken  
 4 that Eastern Health are operating ethically  
 5 and they're doing the right things for the  
 6 right reasons, you know, and that was -- that  
 7 was the understanding that I had gotten that  
 8 even, you know, the pathologists upon  
 9 discovering this, and the focus of Eastern  
 10 Health upon discovering this, never questioned  
 11 whether they should send it or not, and that's  
 12 probably the better way to put this.  
 13 COFFEY, Q.C.:  
 14 Q. Okay.  
 15 MR. OSBORNE:  
 16 A. Because maybe my choice of words would have  
 17 been misleading, but my understanding was they  
 18 never questioned the right thing, they just  
 19 did the right thing. Maybe that clarifies it.  
 20 COFFEY, Q.C.:  
 21 Q. Yes, okay, that's what I was trying to  
 22 understand. I appreciate by the time you came  
 23 along, that had been quite a number of months  
 24 earlier those decisions had been made.  
 25 MR. OSBORNE:

Page 31

1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. If, in fact, even somebody consciously even  
 4 thought about it. So that predated your --  
 5 MR. OSBORNE:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. Your time.  
 9 MR. OSBORNE:  
 10 A. But, no, it was never explained to me that  
 11 somebody had consciously thought about the  
 12 decision. It was just me, my own assessment  
 13 of Eastern Health, they had done the right  
 14 thing, they immediately did the right thing,  
 15 you know, despite the fact that it would  
 16 obviously question or shake the confidence in  
 17 the lab because it was in the best interest of  
 18 the patients. So that was my own analysis  
 19 that they had done the right thing ethically  
 20 and morally.  
 21 COFFEY, Q.C.:  
 22 Q. Now in terms of -- could we bring up Exhibit  
 23 P-049. This particular exhibit, and this is a  
 24 cover letter that Dr. Banerjee sent -- this is  
 25 an exhibit that Mr. Simmons asked you about --

Page 32

1 asked you some questions about and took you  
 2 through. Just looking at that letter of May  
 3 23rd, 2006, to Dr. Robert Williams, he does  
 4 conclude with the sentence, and it's just  
 5 three lines of the letter, "I trust this is  
 6 helpful and will allow the Department to  
 7 proceed with the implementation of the  
 8 remaining items from my previous  
 9 recommendations". Now your understanding by  
 10 the end of May, 2006, and certainly by June,  
 11 2006, was what in terms of the  
 12 recommendations? What was the status of the  
 13 recommendations?  
 14 MR. OSBORNE:  
 15 A. My understanding, and based on briefing notes  
 16 --  
 17 COFFEY, Q.C.:  
 18 Q. Briefing notes.  
 19 MR. OSBORNE:  
 20 A. I mean, it's written in the briefing notes  
 21 that all recommendations were implemented.  
 22 COFFEY, Q.C.:  
 23 Q. "Were", I guess in past tense?  
 24 MR. OSBORNE:  
 25 A. Yes, that all recommendations were



Page 33

1 implemented, so my understanding was after the  
 2 external consultant had come back, he was  
 3 pleased with the progress, or generally  
 4 pleased with the progress, if I remember  
 5 correctly was the wording I made on the  
 6 briefing note.  
 7 COFFEY, Q.C.:  
 8 Q. You did. So at the time, late spring, early  
 9 summer of 2006, your understanding was the  
 10 recommendations that had occurred in the fall  
 11 of '05 had been implemented?  
 12 MR. OSBORNE:  
 13 A. That's correct.  
 14 COFFEY, Q.C.:  
 15 Q. And these two individuals from outside the  
 16 province had been back here in the spring of  
 17 '06, had done what was required and were  
 18 pleased?  
 19 MR. OSBORNE:  
 20 A. If it's helpful, in fact ironically, my  
 21 briefing note is open to March 15th.  
 22 COFFEY, Q.C.:  
 23 Q. If we could bring that up, please. The exhibit  
 24 number, is that on your document?  
 25 MR. OSBORNE:

Page 34

1 A. No.  
 2 COFFEY, Q.C.:  
 3 Q. If we could bring up, please, P-0314. So this  
 4 is --  
 5 MR. OSBORNE:  
 6 A. March 15th.  
 7 COFFEY, Q.C.:  
 8 Q. March 15th, okay, which is page one.  
 9 MR. OSBORNE:  
 10 A. Yes, the very first briefing note that I had  
 11 received under page one of that briefing note.  
 12 COFFEY, Q.C.:  
 13 Q. Page one of the exhibit?  
 14 MR. OSBORNE:  
 15 A. Yes. It says, "Their recommendations have  
 16 been implemented". That would have been March  
 17 15th.  
 18 COFFEY, Q.C.:  
 19 Q. So that is -- quality review is the third key  
 20 message, isn't it?  
 21 MR. OSBORNE:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. And it's the second sentence -- I'm sorry, the  
 25 third sentence, "Their recommendations have

Page 35

1 been implemented and the consultants are  
 2 expected to return to Eastern Health in early  
 3 April". So looking back at even the covering  
 4 letter itself of May 23rd, 2006, reading that  
 5 suggests that Dr. Banerjee was of the view  
 6 that his then current report would allow the  
 7 Department to proceed with the implementation  
 8 of the remaining items, suggesting that there  
 9 were some in his original previous  
 10 recommendations that had not yet been  
 11 implemented. That's correct, isn't it? Like,  
 12 reading that, what would you take from that if  
 13 you had seen it at the time?  
 14 MR. OSBORNE:  
 15 A. Yes, that perhaps there were items that had  
 16 not yet been implemented.  
 17 COFFEY, Q.C.:  
 18 Q. And, in fact, when you recall yesterday Mr.  
 19 Simmons took you through them --  
 20 MR. OSBORNE:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. There were some that had not been addressed?  
 24 MR. OSBORNE:  
 25 A. That's correct.

Page 36

1 COFFEY, Q.C.:  
 2 Q. And I take it in May -- late May of 2006, that  
 3 would have been news to you?  
 4 MR. OSBORNE:  
 5 A. Yes. Well, I mean, I was of the understanding  
 6 really from March 15th when I had arrived in  
 7 the Department -- I believe I arrived on March  
 8 14th, so from March 15th onwards I would have  
 9 been of the understanding that the  
 10 recommendations have been implemented.  
 11 COFFEY, Q.C.:  
 12 Q. Now you were asked a number of questions about  
 13 the deceased and this -- your understanding  
 14 about what was required in order to complete  
 15 the task that you thought should be done in  
 16 relation to the deceased samples.  
 17 MR. OSBORNE:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. You recall that -- not only ensuring that all  
 21 the deceased samples were retested, but also  
 22 that they were sort of analyzed as well?  
 23 MR. OSBORNE:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

Page 37

1 Q. Or considered as to whether it could have  
 2 affected their treatment. On that point,  
 3 because you, I gather, were upset by November  
 4 23rd when you realized that had not been done?  
 5 MR. OSBORNE:  
 6 A. That's correct.  
 7 COFFEY, Q.C.:  
 8 Q. Now on that point, I just -- to put perhaps  
 9 your being upset into context. If we could,  
 10 please -- could be bring up, please, P-0197.  
 11 If we could go to page three, please. Now  
 12 this is the December 12th, 2006 briefing note?  
 13 MR. OSBORNE:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. Now on the second page of that briefing note,  
 17 which is page three of the exhibit under  
 18 background --  
 19 MR. OSBORNE:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. There's a second bullet, "The chronology of  
 23 the ER/PR retesting is as follows", and it  
 24 goes through it in some considerable detail,  
 25 and I'm pointing at one here saying,

Page 38

1 "February, 2006, the last test results were  
 2 received from Mount Sinai", see that?  
 3 MR. OSBORNE:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. And then the next reference is February to  
 7 May, 2006, "Tumor board review test results,  
 8 wrote recommendations and disclosed  
 9 information to patients".  
 10 MR. OSBORNE:  
 11 A. Uh-hm.  
 12 COFFEY, Q.C.:  
 13 Q. Suggesting that by May, 2006, at least  
 14 according to this, the tumor board's work was  
 15 concluded in the main?  
 16 MR. OSBORNE:  
 17 A. Yes, I did notice both in the chronology there  
 18 the information there didn't completely jive  
 19 with information in other briefing notes that  
 20 I have.  
 21 COFFEY, Q.C.:  
 22 Q. Yes, and if then by February, 2006, the last  
 23 test results were received from Mount Sinai,  
 24 and you understood that 101 deceased tissue  
 25 samples had already been retested, did you

Page 39

1 understand then that if they had been  
 2 retested, they had been retested by February  
 3 of '06?  
 4 MR. OSBORNE:  
 5 A. My understanding was that of the 939 that had  
 6 been sent, they had all been received back  
 7 prior to November. My understanding was there  
 8 were 939 samples sent to Mount Sinai, and at  
 9 one point I recall, and I don't recall the  
 10 exact date, it is on a briefing note, but they  
 11 were awaiting the results of the 16 remaining  
 12 samples.  
 13 COFFEY, Q.C.:  
 14 Q. Sure.  
 15 MR. OSBORNE:  
 16 A. So my understanding was that there were 939  
 17 sent, that there would be 939 received back.  
 18 So obviously on November 23rd when I  
 19 discovered that, in fact, there were 73 not  
 20 even sent and received, that was certainly  
 21 news to me.  
 22 COFFEY, Q.C.:  
 23 Q. Yes, and those 73 were deceased individuals  
 24 samples?  
 25 MR. OSBORNE:

Page 40

1 A. That's correct.  
 2 COFFEY, Q.C.:  
 3 Q. But you were also told that 101 deceased  
 4 tissue samples --  
 5 MR. OSBORNE:  
 6 A. Had been sent.  
 7 COFFEY, Q.C.:  
 8 Q. Had been sent and received back, retested and  
 9 sent back?  
 10 MR. OSBORNE:  
 11 A. That's correct.  
 12 COFFEY, Q.C.:  
 13 Q. And looking at this December 12th briefing  
 14 note, those 101 would have had to have been  
 15 back by February of '06 because they were all  
 16 done by February of '06?  
 17 MR. OSBORNE:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. All in the sense of anything that they had --  
 21 MR. OSBORNE:  
 22 A. Even including the 73, one would presume.  
 23 COFFEY, Q.C.:  
 24 Q. Yeah, I --  
 25 MR. OSBORNE:

Page 41

1 A. Yeah.  
 2 COFFEY, Q.C.:  
 3 Q. So you go to the meeting on November 23rd.  
 4 You go into the meeting thinking they're all  
 5 done?  
 6 MR. OSBORNE:  
 7 A. That's right.  
 8 COFFEY, Q.C.:  
 9 Q. It's a surprise to learn that 73 haven't even  
 10 been sent?  
 11 MR. OSBORNE:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. But you were told 101 had been sent?  
 15 MR. OSBORNE:  
 16 A. And received.  
 17 COFFEY, Q.C.:  
 18 Q. And there's a disagreement over the urgency  
 19 with which they should be addressed, the 101,  
 20 and, in fact, the other 73 for that matter?  
 21 MR. OSBORNE:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. And that led to the exchanges you've  
 25 described, but those 101 -- like, on November

Page 42

1 23rd -- I'm trying to get some sense -- on  
 2 November 23rd, when had you understood the 101  
 3 had been retested?  
 4 MR. OSBORNE:  
 5 A. Well, on November 23rd, that was the first  
 6 time I was introduced to that number.  
 7 COFFEY, Q.C.:  
 8 Q. Yeah.  
 9 MR. OSBORNE:  
 10 A. On November 23rd.  
 11 COFFEY, Q.C.:  
 12 Q. And at that time, you understood those 101 had  
 13 been done when, had been retested when?  
 14 MR. OSBORNE:  
 15 A. Well, my understanding, not only the 101, but  
 16 the other 73 --  
 17 COFFEY, Q.C.:  
 18 Q. No, I appreciate -- not the beginning of the  
 19 meeting. I'm talking about by the end of the  
 20 meeting when you actually know the 73 haven't  
 21 been sent.  
 22 MR. OSBORNE:  
 23 A. Okay.  
 24 COFFEY, Q.C.:  
 25 Q. By the end of the meeting, you understood what

Page 43

1 about the 101?  
 2 MR. OSBORNE:  
 3 A. Well, they didn't indicate when that 101 were  
 4 sent or received at that meeting.  
 5 COFFEY, Q.C.:  
 6 Q. Okay. They didn't?  
 7 MR. OSBORNE:  
 8 A. No, I had not asked when -- I hadn't  
 9 specifically asked, well, when did you send  
 10 these 101 and when did you receive them back.  
 11 COFFEY, Q.C.:  
 12 Q. Can we bring up, please, P-0314, page 10.  
 13 This is the -- you were asked about this  
 14 particular exhibit, the figures there, that  
 15 101 figure.  
 16 MR. OSBORNE:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. And it does say at the bottom of the page --  
 20 this is the November 23rd briefing note. It  
 21 does say, "Patients who are deceased, 176, 101  
 22 were retested and results received". Did you  
 23 ever ask of those 101 had a change in results?  
 24 MR. OSBORNE:  
 25 A. Yes.

Page 44

1 COFFEY, Q.C.:  
 2 Q. And when did you ask that?  
 3 MR. OSBORNE:  
 4 A. At the meeting, at the November 23rd meeting.  
 5 COFFEY, Q.C.:  
 6 Q. What were you told?  
 7 MR. OSBORNE:  
 8 A. We were told that none of the deceased, with  
 9 the exception of two -- there were two  
 10 families that had requested the results for  
 11 their family -- sorry, there were two families  
 12 that had requested the results for family  
 13 members and they had been reviewed by Eastern  
 14 Health upon request of the families.  
 15 COFFEY, Q.C.:  
 16 Q. I appreciate the review, which is the issue, I  
 17 take it, of whether or not -- two had been  
 18 retested upon request?  
 19 MR. OSBORNE:  
 20 A. That's right.  
 21 COFFEY, Q.C.:  
 22 Q. Which is -- retesting is different than  
 23 considering whether or not it could or  
 24 couldn't have affected their treatment. There  
 25 are two different issues. Do you understand

Page 45

1 that?  
 2 MR. OSBORNE:  
 3 A. I'm sorry?  
 4 COFFEY, Q.C.:  
 5 Q. It's one thing to retest a sample to see if  
 6 the result changes or not, okay.  
 7 MR. OSBORNE:  
 8 A. Uh-hm.  
 9 COFFEY, Q.C.:  
 10 Q. And after you get the result --  
 11 MR. OSBORNE:  
 12 A. The review, yes, I understand.  
 13 COFFEY, Q.C.:  
 14 Q. You understand because you spoke to the  
 15 Commissioner about that yesterday.  
 16 MR. OSBORNE:  
 17 A. That's correct, yes.  
 18 COFFEY, Q.C.:  
 19 Q. I'm asking you in terms of the 101 because you  
 20 knew there were 101 had been retested and the  
 21 results were back.  
 22 MR. OSBORNE:  
 23 A. That is right.  
 24 COFFEY, Q.C.:  
 25 Q. And on November 23rd during the meeting, you

Page 46

1 understood that?  
 2 MR. OSBORNE:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. Did you ask Eastern Health at that time, well,  
 6 what are the results, like, how many of them  
 7 changed?  
 8 MR. OSBORNE:  
 9 A. I was advised that of the 101, that they were  
 10 sent to Mount Sinai and received, but never  
 11 reviewed by the tumor panel.  
 12 COFFEY, Q.C.:  
 13 Q. And I appreciate that. Leave that aside,  
 14 leave the tumor panel aside for the moment,  
 15 okay.  
 16 MR. OSBORNE:  
 17 A. Okay.  
 18 COFFEY, Q.C.:  
 19 Q. How about the results from Mount Sinai,  
 20 whether they were different than the original  
 21 results, did you ask them whether there had  
 22 been a change in result?  
 23 MR. OSBORNE:  
 24 A. Well, they would not have known that if the  
 25 tumor panel had not reviewed them. I mean, if

Page 47

1 Mount Sinai sent the results back and they  
 2 were never reviewed by the Eastern Health so  
 3 they weren't compared, you wouldn't know if  
 4 there was a change in sample.  
 5 COFFEY, Q.C.:  
 6 Q. Okay, if I could just on that point because I  
 7 want to clarify this, look back up the page,  
 8 okay, results obtained and reviewed, 763.  
 9 MR. OSBORNE:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. And it says, "No change in results and  
 13 subsequently no change in treatment, 433".  
 14 MR. OSBORNE:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. And then it breaks it down.  
 18 MR. OSBORNE:  
 19 A. Uh-hm.  
 20 COFFEY, Q.C.:  
 21 Q. It goes on about confirmed negative, 341;  
 22 confirmed negative from panel, 28; confirmed  
 23 positive, 12; and DCIS, 12. I take it you  
 24 didn't inquire into what the confirmed  
 25 negative meant, confirmed negative from panel

Page 48

1 meant, confirmed positive, DCIS?  
 2 MR. OSBORNE:  
 3 A. No, not at that time.  
 4 COFFEY, Q.C.:  
 5 Q. Distinguishing why they were broken out that  
 6 way?  
 7 MR. OSBORNE:  
 8 A. No, I didn't, no.  
 9 COFFEY, Q.C.:  
 10 Q. But the descriptions of that, you now know  
 11 there were descriptions in the August 18th  
 12 briefing note explaining all that?  
 13 MR. OSBORNE:  
 14 A. Yes, there were.  
 15 COFFEY, Q.C.:  
 16 Q. Okay. When we go on down the page there, it  
 17 says, after the no change in results, requires  
 18 change in treatment, definition of negative  
 19 has changed, we've already spoken about that,  
 20 but then it says, "Change in results, but does  
 21 not require treatment change, 213".  
 22 MR. OSBORNE:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. Then there's a breakout of that group,

Page 49

1 and then there's a change in results, requires  
 2 treatment change, 104, and then the reference  
 3 to the deceased. What was your understanding,  
 4 Mr. Osborne, of, just to break down the 763,  
 5 so many results had come back--let me just go  
 6 up here--no change in results and subsequently  
 7 no change in treatment, 433.  
 8 MR. OSBORNE:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Results from where? Is it Mount Sinai results  
 12 compared to the original results in  
 13 Newfoundland or -  
 14 MR. OSBORNE:  
 15 A. Well in order to arrive at that number, you  
 16 know, the assumption would be that those would  
 17 have been reviewed by the tumor panel to  
 18 determine that there were no change in  
 19 results.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. So you had understood what? What did  
 22 you understand was actually going on? Perhaps  
 23 you could just explain to me because we're  
 24 operating on a certain, I suppose, approach to  
 25 what we understand happened. Perhaps you can

Page 50

1 tell us what you understood had happened?  
 2 MR. OSBORNE:  
 3 A. On November 23rd?  
 4 COFFEY, Q.C.:  
 5 Q. Well after the meeting on November 23rd and by  
 6 the end of that, okay, you understood what had  
 7 happened in terms of all these tissue samples  
 8 and how they were handled?  
 9 THE COMMISSIONER:  
 10 Q. How they were handled or how they were -  
 11 COFFEY, Q.C.:  
 12 Q. How they were handled and who they were sent  
 13 off and who they were looked at by, just so  
 14 we're clear on this.  
 15 MR. OSBORNE:  
 16 A. Okay, I mean my understanding was that 939  
 17 tissue samples would be sent to Mount Sinai -  
 18 COFFEY, Q.C.:  
 19 Q. So that's actual blocks with tissue in it,  
 20 it's actually a paraffin block, okay.  
 21 MR. OSBORNE:  
 22 A. Yes, so they would be sent to Mount Sinai for  
 23 analysis at Mount Sinai. Mount Sinai would  
 24 carry out that analysis, send the samples back  
 25 to Eastern Health--or send the result back to

Page 51

1 Eastern Health, I guess, their result of what  
 2 they had determined the sample to be.  
 3 COFFEY, Q.C.:  
 4 Q. In terms of percentage, ER/PR?  
 5 MR. OSBORNE:  
 6 A. Correct, or otherwise. I mean, you know, I  
 7 understand that they had found that some of  
 8 the samples that were sent were actually DCIS  
 9 and so on, so they would make a determination  
 10 on the samples, send them back to Eastern  
 11 Health.  
 12 COFFEY, Q.C.:  
 13 Q. Send back the results.  
 14 MR. OSBORNE:  
 15 A. Send the results back to Eastern Health.  
 16 Eastern Health would then review the results  
 17 from Mount Sinai against their original  
 18 results and make a determination as to whether  
 19 there was a change in result from what Mount  
 20 Sinai had determined and what they had  
 21 originally determined. It was the tumor  
 22 panel, as I understand it, that was doing that  
 23 analysis.  
 24 COFFEY, Q.C.:  
 25 Q. Comparing like the number, a figure, zero

Page 52

1 percent, originally -  
 2 MR. OSBORNE:  
 3 A. Yes, comparing the results from Mount Sinai  
 4 against their original results from their  
 5 original analysis from, you know, I guess 1997  
 6 up to 2004 would be the original results.  
 7 COFFEY, Q.C.:  
 8 Q. And then?  
 9 MR. OSBORNE:  
 10 A. And then the tumor panel would then make a  
 11 determination as to whether there was a change  
 12 in status and if there was no change in  
 13 status, it required no treatment or no  
 14 treatment change. If there was a change in  
 15 status, then they would make a determination  
 16 as to whether there was a change in treatment  
 17 required. Now which part of this process did  
 18 you understand was time and labour  
 19 intensive, in terms of like after the results  
 20 came back from Mount Sinai?  
 21 MR. OSBORNE:  
 22 A. Nobody had actually explained that to me, what  
 23 was actually labour intensive, so I really  
 24 wouldn't be qualified to speak on that, nobody  
 25 had explained that aspect of it.

1 COFFEY, Q.C.:  
 2 Q. And you understood, though, that the review  
 3 panel, I'll call it, that group was looking at  
 4 and considering all of the results coming back  
 5 from Mount Sinai and comparing them to the  
 6 original results, like each individual  
 7 patient?  
 8 MR. OSBORNE:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. And making its own determination as to whether  
 12 there had been a change in status, as it were.  
 13 MR. OSBORNE:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. And then, as you've indicated, if they  
 17 determined there was no change in status, then  
 18 there would be no change in treatment; but if  
 19 there was a change in status, they had to go  
 20 on and consider whether there was a change in  
 21 treatment?  
 22 MR. OSBORNE:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Now on that point then, when you were told on

1 the numbers and arrive at conclusions. This  
 2 information will form the basis of a quality  
 3 review. Analysis is currently continuing."  
 4 Now I appreciate that this is appended to or  
 5 is part of the December 11th, 2006 media  
 6 briefing material. And I understand from what  
 7 you've told us that you did not go through  
 8 that in detail.  
 9 MR. OSBORNE:  
 10 A. No, that's correct.  
 11 COFFEY, Q.C.:  
 12 Q. Were you aware that there was a statistical  
 13 review that had been initiated? Had you been  
 14 made aware that that was so? Has anybody told  
 15 you that?  
 16 MR. OSBORNE:  
 17 A. No, not up until -  
 18 COFFEY, Q.C.:  
 19 Q. November 23rd?  
 20 MR. OSBORNE:  
 21 A. Well not even up until the start of this  
 22 inquiry, I don't think I would--not that I  
 23 recall.  
 24 COFFEY, Q.C.:  
 25 Q. Yes, okay. So you don't recall anybody from

1 November 23rd that the 101 deceased samples  
 2 results were back, so what did you understand  
 3 would be required to be done in relation to  
 4 determining whether there had been a change in  
 5 status for those 101?  
 6 MR. OSBORNE:  
 7 A. I was simply told that they were not reviewed  
 8 by the tumor panel and we didn't pursue why  
 9 they hadn't reviewed them or how much was  
 10 involved in reviewing them at the time.  
 11 That's when the discussion deteriorated at  
 12 that particular point when we realized that  
 13 the samples for the deceased, some were not  
 14 even sent, some were sent and returned but not  
 15 reviewed, and they told us that there was no  
 16 way of telling us or no way of determining  
 17 prior to the media briefing what the total  
 18 numbers were for the deceased.  
 19 COFFEY, Q.C.:  
 20 Q. If I could please, Registrar, Exhibit P-0104.  
 21 Thank you. And if we could see page two,  
 22 please? Now this is a chronology that you  
 23 were asked about yesterday and you were asked  
 24 about this September 2006 reference to "A  
 25 statistical review was initiated to examine

1 your department or from Eastern Health sitting  
 2 down with you or discussing with you on the  
 3 phone or whatever, other than this reference  
 4 here in passing to this, the subject of a  
 5 statistical review having been initiated to  
 6 examine the numbers and arrive at conclusions  
 7 being discussed with you?  
 8 MR. OSBORNE:  
 9 A. No.  
 10 COFFEY, Q.C.:  
 11 Q. You weren't aware of that. And the fact that  
 12 that information would form the basis of the  
 13 quality review and an analysis was then  
 14 currently continuing, you weren't aware of  
 15 that?  
 16 MR. OSBORNE:  
 17 A. I wasn't aware of that, no. Again, I should  
 18 say I'm always afraid of these answers because  
 19 I -  
 20 COFFEY, Q.C.:  
 21 Q. Well you don't recall being aware of it.  
 22 MR. OSBORNE:  
 23 A. I don't recall being aware of it.  
 24 COFFEY, Q.C.:  
 25 Q. I understand. And other than that November

Page 57

1 23rd, 2006 briefing note with your handwriting  
 2 on it, other than the numbers there and the  
 3 numbers in the briefing note of December--I  
 4 think it's November 27th, '06 and December  
 5 12th, '06, other than those numbers, have you  
 6 ever seen any other numbers?  
 7 MR. OSBORNE:  
 8 A. I think the only other numbers that I ever  
 9 seen were the numbers on the DCIS -  
 10 COFFEY, Q.C.:  
 11 Q. Which is late July.  
 12 MR. OSBORNE:  
 13 A. July 31st I think the date was, yes.  
 14 COFFEY, Q.C.:  
 15 Q. And Mr. Simmons showed you those. I referred  
 16 you to them, Mr. Simmons did as well.  
 17 MR. OSBORNE:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. But in terms of a statistical analysis?  
 21 MR. OSBORNE:  
 22 A. Nobody had ever broken down the statistics or  
 23 given me a statistical analysis of what the  
 24 numbers had meant, no.  
 25 COFFEY, Q.C.:

Page 58

1 Q. Okay. Just on the point of Exhibit 0314, page  
 2 10 again and Mr. Pritchard was asking you  
 3 about this, the 3-4 percent within rate of  
 4 error and you did say to Mr. Pritchard that  
 5 you believed that that should have been margin  
 6 of error?  
 7 MR. OSBORNE:  
 8 A. Yes, I'm certain of that, actually.  
 9 COFFEY, Q.C.:  
 10 Q. But you said as well that because the rate of  
 11 error had been on your mind, that's probably  
 12 actually why you wrote "rate", rather than  
 13 "margin"?  
 14 MR. OSBORNE:  
 15 A. That would be correct.  
 16 COFFEY, Q.C.:  
 17 Q. So you had gone to the meeting with the idea  
 18 of rate of error on your mind.  
 19 MR. OSBORNE:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. Was rate of error discussed during the  
 23 meeting?  
 24 MR. OSBORNE:  
 25 A. No, it wasn't discussed, I mean it was

Page 59

1 obviously a question that I had wanted  
 2 answered, but once we had arrived at the  
 3 section of their briefing where they had  
 4 talked about the deceased, I mean, it became  
 5 evident to me that without the numbers for the  
 6 deceased, there was no way they could give me  
 7 a rate of error.  
 8 COFFEY, Q.C.:  
 9 Q. Okay. Madam Commissioner, they're my  
 10 questions. Unless you have some -  
 11 THE COMMISSIONER:  
 12 Q. Thank you, sir, very much for your  
 13 contribution to the inquiry. I think you  
 14 probably appreciate that this is--you're part  
 15 of a very long, long process in which we'll  
 16 get a number of witnesses come here and give  
 17 me their recollections of what occurred and  
 18 it's important that I get perspectives from  
 19 different people who had different positions  
 20 and were in a position to give, have different  
 21 observations of what occurred at the time, so  
 22 I very much appreciate your coming. Thank  
 23 you.  
 24 MR. OSBORNE:  
 25 A. Madam Commissioner, thank you and as I've said

Page 60

1 earlier to everybody involved, you know, I  
 2 certainly wish the Commission well in  
 3 determining what had gone wrong and making  
 4 recommendations. I look forward to those  
 5 recommendations.  
 6 THE COMMISSIONER:  
 7 Q. Thank you, sir. Now, Ms. Chaytor, you're  
 8 standing there. Are you ready to proceed now  
 9 before the break or do you want to have an  
 10 early break or which would you prefer to do  
 11 before the next witness?  
 12 MS. CHAYTOR:  
 13 Q. Whichever is most convenient.  
 14 THE COMMISSIONER:  
 15 Q. Well actually I'd like to proceed and then we  
 16 can take the break in half an hour, if that's  
 17 all right. Mr. Pritchard, perhaps you can  
 18 show the witness out, and perhaps tell the  
 19 next witness that we're ready.  
 20 MS. CHAYTOR:  
 21 Q. Good morning, Mr. Wiseman.  
 22 MR. WISEMAN:  
 23 A. Good morning.  
 24 MS. CHAYTOR:  
 25 Q. Take your time and set up your books.

Page 61

1 MR. ROSS WISEMAN (SWORN) EXAMINATION BY MS. SANDRA  
 2 CHAYTOR  
 3 MS. CHAYTOR:  
 4 Q. Mr. Wiseman, there is another volume to your  
 5 immediate left which is an exhibit volume. I  
 6 see you have your own book, but also the  
 7 exhibits that I will be referring to will come  
 8 up on the screen in front of you, and you do  
 9 have a mouse if you need to scroll down at any  
 10 point in time, but for the most part, I should  
 11 direct you through the exhibits.  
 12 Commissioner, there are new exhibits that I  
 13 will be referring to or may refer to during  
 14 the evidence this morning and those are  
 15 Exhibits P-0200 through to P-0285, inclusive,  
 16 if those could be entered please.  
 17 THE COMMISSIONER:  
 18 Q. Okay, exhibits P-0200 through P-0285 entered.  
 19 EXHIBITS ENTERED AND MARKED P-0200 THROUGH P-0285  
 20 MS. CHAYTOR:  
 21 Q. Thank you. Mr. Wiseman, perhaps we could  
 22 begin with you giving us an outline of your  
 23 educational and professional background?  
 24 MR. WISEMAN:  
 25 A. I was working in reverse order, I was elected

Page 62

1 to the House of Assembly in April of 2000 as  
 2 the MHA for the District of Trinity North and  
 3 then re-elected in October of 2003. At that  
 4 time I was appointed as the parliamentary  
 5 secretary to the Minister of Health and  
 6 Community Services and then in January of  
 7 2007, I was appointed as the Minister of  
 8 Health and Community Services and then re-  
 9 elected in the fall of 2007 and reappointed as  
 10 Minister of Health and Community Services  
 11 after that provincial election. Prior to  
 12 entering politics in 2000, I had been with,  
 13 from 1985 to that period of 2000, I was with  
 14 the former Clarendville Area Hospital Board and  
 15 the former Peninsula's Health Care Corporation  
 16 and with that employer, I was working out of  
 17 Clarendville. Prior to that I spent a number  
 18 of years in the financial service industry,  
 19 predominantly within the banking industry and  
 20 the life insurance industry and that's my  
 21 professional work life.  
 22 Academically I completed a series of  
 23 business programs. I have a certificate in  
 24 Health Service Administration and Long-term  
 25 Care Management, together with a variety--both

Page 63

1 within the health sector and the financial  
 2 services sectors, a number of industry related  
 3 programs.  
 4 MS. CHAYTOR:  
 5 Q. What was your position with the Clarendville  
 6 Area Hospital Board?  
 7 MR. WISEMAN:  
 8 A. From 1985 to 1995, I was the Assistant  
 9 Executive Director with a variety of program  
 10 responsibilities and programs and services  
 11 reporting to me, and then between 1995 and  
 12 2000 with Peninsulas Health Corporation, I was  
 13 Director of Human Resources.  
 14 MS. CHAYTOR:  
 15 Q. And during your time did the Medical  
 16 Laboratory Services, was that one of the  
 17 programs which came under your jurisdiction?  
 18 MR. WISEMAN:  
 19 A. During the period from 1985 through 1995,  
 20 there was a block of that time where  
 21 laboratory services did report to me.  
 22 MS. CHAYTOR:  
 23 Q. And what would that mean? What would your  
 24 involvement be?  
 25 MR. WISEMAN:

Page 64

1 A. Fundamentally it was an administrative  
 2 liaison, the laboratory was--there was a  
 3 pathologist who--and a manager of that service  
 4 and I was that link to the administrative  
 5 function.  
 6 MS. CHAYTOR:  
 7 Q. Did it ever come to your attention during your  
 8 position that there were any concerns with  
 9 pathology or laboratory services?  
 10 MR. WISEMAN:  
 11 A. Within that facility?  
 12 MS. CHAYTOR:  
 13 Q. Yes.  
 14 MR. WISEMAN:  
 15 A. Not to my knowledge, no, other than, you know,  
 16 the normal operating things that may come to  
 17 my attention that we needed some approval for,  
 18 but in terms of a, you know, a significant or  
 19 a serious operational problem that the lab  
 20 would have had, it didn't come to my  
 21 attention?  
 22 MS. CHAYTOR:  
 23 Q. Otherwise did it come to your attention  
 24 outside of that facility that there were any  
 25 concerns of the laboratory services or



Page 65

1 pathology services while you were in your  
 2 position?  
 3 MR. WISEMAN:  
 4 A. No, no.  
 5 MS. CHAYTOR:  
 6 Q. You entered politics in 2000.  
 7 MR. WISEMAN:  
 8 A. I did.  
 9 MS. CHAYTOR:  
 10 Q. And were you the opposition critic for the  
 11 Department of Health during that time period?  
 12 MR. WISEMAN:  
 13 A. In the fall, early fall of 2001, I was  
 14 appointed by the leader of the party at the  
 15 time, current Premier, to the role as critic  
 16 for health services and held that until we  
 17 successfully got re-elected in October of  
 18 2003.  
 19 MS. CHAYTOR:  
 20 Q. And during that time period while you were  
 21 opposition critic, did any concern regarding  
 22 laboratory services or quality services within  
 23 the province come to your attention?  
 24 MR. WISEMAN:  
 25 A. Not that I can recall in a large scale, there

Page 66

1 may have been the odd question I may have  
 2 posed with respect to diagnostic services, but  
 3 I don't recall it very specifically, no.  
 4 MS. CHAYTOR:  
 5 Q. And then you went on to become Parliamentary  
 6 Secretary to the Minister of Department of  
 7 Health and Community Services. Who was that  
 8 at that point in time?  
 9 MR. WISEMAN:  
 10 A. After the election of October 2003, it was  
 11 Beth Marshall and I'm not sure of the exact  
 12 time, she was followed then by former Minister  
 13 John Ottenheimer and I remained as  
 14 Parliamentary Secretary during that period and  
 15 that was then followed by former health  
 16 minister, Tom Osborne, and I remained in my  
 17 role as Parliamentary Secretary through those  
 18 three ministers.  
 19 MS. CHAYTOR:  
 20 Q. And what did it mean to be Parliamentary  
 21 Secretary to those ministers?  
 22 MR. WISEMAN:  
 23 A. That would vary, the role of Parliamentary  
 24 Secretary is not necessarily one that is well  
 25 defined. The relationship that you have with

Page 67

1 each minister and the role that you play for  
 2 each minister will vary, depending on the  
 3 minister. It's kind of a support role, you  
 4 represent the minister sometimes at speaking  
 5 engagements; you may represent the minister in  
 6 attending a meeting on behalf of the  
 7 department or on behalf of the minister with  
 8 organizations from outside. You may be  
 9 involved in some internal committee activity  
 10 and in my particular case, there were a couple  
 11 of very specific files that government had  
 12 working on that I took a lead role in,  
 13 primarily around aging in seniors and so,  
 14 during most of that period, particularly  
 15 during Minister Ottenheimer's period, that  
 16 was--I was very intensely involved with that  
 17 particular file.  
 18 MS. CHAYTOR:  
 19 Q. Sometimes we hear the phrase "junior minister"  
 20 is a Parliamentary Secretary sometimes  
 21 referred to as a junior minister?  
 22 MR. WISEMAN:  
 23 A. That is the case, as I understand it in some  
 24 jurisdictions, but in this province, that's  
 25 not how we function. We would not attend

Page 68

1 Cabinet meetings, we would not be a part of a  
 2 Cabinet Committee structure. On occasion you  
 3 may attend a Cabinet Committee meeting to make  
 4 a presentation on an issue that you may be  
 5 dealing with and I just reference the file on  
 6 healthy aging, for example, I remember making  
 7 a presentation to a group of Cabinet ministers  
 8 in and around that particular initiative, but  
 9 that would be your involvement with the  
 10 Cabinet or the Cabinet Committee structure.  
 11 MS. CHAYTOR:  
 12 Q. So you didn't regularly attend Cabinet  
 13 meetings?  
 14 MR. WISEMAN:  
 15 A. Not at all, it wasn't just regular, but during  
 16 that period I hadn't--you would never be to,  
 17 as a Parliamentary Secretary, you would not  
 18 attend Cabinet meetings. You may, although I  
 19 didn't, you may be there if the department was  
 20 making a presentation to Cabinet that you were  
 21 providing some support to, you may be there  
 22 for that kind of a presentation, but it would  
 23 be just for the presentation and then leave.  
 24 MS. CHAYTOR:  
 25 Q. And how closely would you have worked with

Page 69

1 your ministers, in terms of on a day-to-day  
 2 basis? For example, would you be almost job  
 3 shadowing? Would you be with the minister  
 4 whenever the minister was being briefed on a  
 5 given issue?  
 6 MR. WISEMAN:  
 7 A. Not at all. It was--and again, it varied, you  
 8 know, for example with Minister Marshall when  
 9 she was there, in the early stages of our  
 10 forming government at that time, frequently I  
 11 would be with her while we were, you know,  
 12 being, providing a--get an update on an issue  
 13 or as a part of that orientation to the  
 14 department, I attended those kinds of  
 15 briefings frequently with her. And then  
 16 sometimes we went to meetings together. With  
 17 Minister Ottenheimer that wasn't the case. I  
 18 didn't do that. With Minister Osborne I  
 19 didn't do that. Again, as I said earlier, you  
 20 know, the role of Parliamentary Secretary is  
 21 not well laid out, it's not well defined.  
 22 It's a support role to the minister and that  
 23 will vary, depending on the minister  
 24 themselves and/or the special interest that  
 25 you might have as a Parliamentary Secretary

Page 70

1 that's, and in my particular case, you know,  
 2 there was some areas of interest that I had  
 3 and that's what I pursued.  
 4 MS. CHAYTOR:  
 5 Q. And during your time as Parliamentary  
 6 Secretary, were you involved at all in the  
 7 issue of ER/PR?  
 8 MR. WISEMAN:  
 9 A. No, I was not.  
 10 MS. CHAYTOR:  
 11 Q. And you assumed the position of Minister of  
 12 Health and Community Services, January 19th,  
 13 2007?  
 14 MR. WISEMAN:  
 15 A. It was, yes.  
 16 MS. CHAYTOR:  
 17 Q. One other question about your time in  
 18 Clarenville, did you become aware or were you  
 19 aware back in that time period that  
 20 Clarenville was in fact, once IHC was  
 21 introduced and ER/PR testing, that Clarenville  
 22 was sending their samples to Mount Sinai  
 23 directly for testing and not to St. John's?  
 24 MR. WISEMAN:  
 25 A. I wasn't aware of that while I was there, no.

Page 71

1 MS. CHAYTOR:  
 2 Q. And when did you become aware of that?  
 3 MR. WISEMAN:  
 4 A. Actually when I realized that--well  
 5 fundamentally when I realized that none of  
 6 the--in February when Eastern Health restarted  
 7 the ER/PR testing and I realized or found out  
 8 that they were only doing those in St. John's  
 9 at the time. And then it was probably when  
 10 you may have shared it when we had the  
 11 preliminary discussions to this exercise -  
 12 MS. CHAYTOR:  
 13 Q. The interview.  
 14 MR. WISEMAN:  
 15 A. - which would have been in February or March,  
 16 whichever one it was, I can't remember which  
 17 now, but I think you shared it at that time  
 18 and I may have provided you with a couple of  
 19 names of some people who you had asked about.  
 20 MS. CHAYTOR:  
 21 Q. So you weren't aware of that prior to the  
 22 interview with Commission counsel?  
 23 MR. WISEMAN:  
 24 A. I was aware prior to that interview that test  
 25 results were not being--or tests from ER/PR

Page 72

1 tests in Clarenville facility was not being  
 2 sent to St. John's at that moment in time.  
 3 But the reference to in the past, I wasn't  
 4 aware of that until you shared it.  
 5 MS. CHAYTOR:  
 6 Q. Okay, and so you have no knowledge as to why  
 7 Clarenville made that decision back quite some  
 8 number of years ago?  
 9 MR. WISEMAN:  
 10 A. None whatsoever. And as I said a moment ago  
 11 when you asked about my role in having  
 12 laboratory reporting to me, you know, that  
 13 would have been a, if that had happened during  
 14 that period of time while I was there, that  
 15 would have been a decision that the  
 16 pathologist and the Director of Laboratory  
 17 Services would have made as a part of their  
 18 day-to-day management decisions around the  
 19 operation of the lab and dealing with the  
 20 quality issues.  
 21 MS. CHAYTOR:  
 22 Q. As Parliamentary Secretary, would you have  
 23 been provided with the same, a copy of the  
 24 briefing book that the Minister would have?  
 25 MR. WISEMAN:

Page 73

1 A. No.

2 MS. CHAYTOR:

3 Q. Did you have any briefing notes or briefing

4 materials provided to you as Parliamentary

5 Secretary?

6 MR. WISEMAN:

7 A. I did when, as a part of the briefing that we

8 had, the introduction to the department. Back

9 in the fall of 2003, I would have been

10 provided with a briefing book that the

11 Minister would have been provided with as part

12 of our orientation to the department at that

13 time. But as a matter of course, I would not

14 have been provided with the briefing books.

15 MS. CHAYTOR:

16 Q. So you would have been provided with a

17 briefing book back in 2003. Would that

18 briefing book then be updated for you?

19 MR. WISEMAN:

20 A. That was a part of the orientation to the

21 department, that briefing book, but after the

22 orientation was over, then I wouldn't have

23 been updated with briefing books beyond that

24 point.

25 MS. CHAYTOR:

Page 74

1 Q. Okay, and did you get to keep the material in

2 2003 that was provided to you or was that just

3 during an orientation session?

4 MR. WISEMAN:

5 A. I can't recall being asked to return it, but I

6 wouldn't have it in my possession, I would

7 have returned it as a matter of course,

8 because I didn't need it anymore.

9 MS. CHAYTOR:

10 Q. So any then updated briefing notes or briefing

11 notes that eventually arise in terms of the

12 ER/PR issue, you would not have been provided

13 copies of those while you were Parliamentary

14 Secretary?

15 MR. WISEMAN:

16 A. I would not have been, no.

17 MS. CHAYTOR:

18 Q. I just want to turn then and talk about your

19 role as Minister of Health and Community

20 Services and perhaps you can tell us what do

21 you understand your role, responsibilities and

22 duties to be? And in answering that question,

23 I would like you to do so vis-a-vis the people

24 of the province of Newfoundland and Labrador,

25 firstly; and secondly, the Health Care

Page 75

1 Authorities which come under your department;

2 and thirdly, internally within the government.

3 Your roles, duties and responsibilities, first

4 of all to the people of the province?

5 MR. WISEMAN:

6 A. Relative to the people of the province as the

7 member of the Provincial Cabinet appointed by

8 the Premier and have an administrative

9 responsibility for the Health and Community

10 Services division, department. I have

11 obviously, as a minister, I have a

12 responsibility to the people of the province

13 to ensure that to the best of my ability that

14 I ensure that we have a Quality Health Program

15 in service, that I ensure that we provide a

16 Quality programming to the people and

17 eventually and at the end of the day, I'm

18 accountable to the people of the province with

19 the health system that we have in this

20 province. Relative then to the--your second

21 question was relative to the -

22 MS. CHAYTOR:

23 Q. Relative to the Health Care Authorities, the

24 four health care authorities?

25 MR. WISEMAN:

Page 76

1 A. The health authorities, you know, are

2 separate entities from the Department of

3 Health and Community Services, they're

4 established with their own legislative

5 structure and they get their authority through

6 the legislation, which has recently changed,

7 actually, effective April 1st there's a new

8 piece of legislation governing health

9 authorities.

10 MS. CHAYTOR:

11 Q. Yes, and I'll take you through some of that.

12 MR. WISEMAN:

13 A. They get their authority through that piece of

14 legislation. And the roles and the

15 responsibility that the Minister has and the

16 relationship they have is spelled out a little

17 more currently in the current legislation than

18 it did before, but fundamentally, you know,

19 the Minister provides a broad frame work or--

20 direction of the health authority is to

21 provide some broad direction in terms of the

22 programs and services that the authorities are

23 to provide in their respective regions, you

24 know, provide, in some cases a broad policy

25 frame work for that, and through the budgetary

Page 77

1 process secure funding for them to be able to  
 2 provide those range of services that they've  
 3 been mandated to provide.  
 4 MS. CHAYTOR:  
 5 Q. And internally then within government, what is  
 6 your role, duties and responsibilities as the  
 7 Minister of Health and Community Services?  
 8 MR. WISEMAN:  
 9 A. Within the Cabinet structure itself, you know,  
 10 I bring forward to my Cabinet colleagues the  
 11 issues with respect to Health and Community  
 12 Services, are able to present, you know,  
 13 participate in discussion, present papers, to  
 14 seek direction on certain policy initiatives,  
 15 to seek direction and to secure the necessary  
 16 funding in a budgetary process, for example,  
 17 and also to make a contribution to the  
 18 broader, you know, Cabinet discussion around  
 19 issues that might affect Health and Community  
 20 Services in the province. Within the  
 21 department, you know, I have as a Minister,  
 22 obviously you have with you your senior  
 23 officials, your Deputy, Assistant Deputies who  
 24 you provide some, provide I guess bring back  
 25 to that group of people within the department,

Page 78

1 you know, the decisions of government. And to  
 2 ensure that we then move forward and  
 3 implement, work with them to or to ensure that  
 4 they work together with all of us to develop  
 5 some kind of a future strategy direction for  
 6 the province on the fundamental health issues,  
 7 and to take that information then from the  
 8 department and bring it forward to Cabinet, to  
 9 government, for future decisions.  
 10 MS. CHAYTOR:  
 11 Q. Okay, and I'll ask you some specific questions  
 12 about those within your department and their  
 13 particular roles in a moment. I'd like to go  
 14 back to the issue of the relationship with the  
 15 four health authorities and you've referred to  
 16 them as being separate entities and  
 17 constituted under their own legislation. Is  
 18 it your understanding that the Transparency  
 19 and Accountability Act applies to the health  
 20 authorities?  
 21 MR. WISEMAN:  
 22 A. It does, yes.  
 23 MS. CHAYTOR:  
 24 Q. So they are public bodies pursuant to that  
 25 legislation?

Page 79

1 MR. WISEMAN:  
 2 A. They are.  
 3 MS. CHAYTOR:  
 4 Q. Are they category one, two or three bodies?  
 5 MR. WISEMAN:  
 6 A. I can't answer the question directly, to be  
 7 honest with you because to be frank, I  
 8 wouldn't be able to make the distinction  
 9 between the three for you.  
 10 MS. CHAYTOR:  
 11 Q. Do they provide you with annual reports?  
 12 MR. WISEMAN:  
 13 A. They do.  
 14 MS. CHAYTOR:  
 15 Q. And you have, since assuming your duties in  
 16 January of 2007, received annual reports from  
 17 the four authorities?  
 18 MR. WISEMAN:  
 19 A. I have, yes.  
 20 MS. CHAYTOR:  
 21 Q. And what is the purpose of those reports?  
 22 MR. WISEMAN:  
 23 A. They are to provide, you know, to the minister  
 24 for public distribution, you know, a summary  
 25 of their activity, talking about their broad

Page 80

1 objectives and their performance with respect  
 2 to those objectives that they've established  
 3 in previous years. It speaks to their  
 4 financial performance and program delivery.  
 5 MS. CHAYTOR:  
 6 Q. Okay, and is there any opportunity for the  
 7 department to give feedback on the annual  
 8 reports? For example, to direct that other  
 9 programs would be of more concern or emphasis  
 10 to the government?  
 11 MR. WISEMAN:  
 12 A. The feedback wouldn't necessarily come about  
 13 as a result of the submission of the annual  
 14 report in a very formalized way, but there is  
 15 an ongoing relationship between the department  
 16 and the health authorities with respect to,  
 17 you know, the delivery of programs and  
 18 services through the officials, particularly  
 19 there's, you know, almost, won't use the word  
 20 "continuous" dialogue but very frequent  
 21 dialogue, particularly between the deputy  
 22 minister and the CEO. So if there are broad  
 23 program initiatives that government would like  
 24 to undertake or new directions the government  
 25 would like to see health authorities move in,

Page 81

1 with respect to delivery of programs and  
 2 services, it would be done through that kind  
 3 of mechanism. In addition to that, there's a-  
 4 -I don't know what the practice was in the  
 5 past, but since I've been a Minister, there's  
 6 been maybe three, possibly even four occasions  
 7 when I've met with the board chairs and the  
 8 CEO's collectively.

9 MS. CHAYTOR:  
 10 Q. Of all four authorities?

11 MR. WISEMAN:  
 12 A. Of all four authorities and there's been -

13 MS. CHAYTOR:  
 14 Q. Met with them, sorry, individually or  
 15 collectively?

16 MR. WISEMAN:  
 17 A. Collectively.

18 MS. CHAYTOR:  
 19 Q. Collectively, yes. I guess there have been  
 20 other occasions when you've met individually  
 21 with them as well?

22 MR. WISEMAN:  
 23 A. Yes, and that's generally been an issue by  
 24 issue or issues that we, as a department, or  
 25 as the Minister may want to discuss with an

Page 82

1 individual authority and may invite them to  
 2 have that kind of a discussion, or there might  
 3 be an issue that they may want to pursue with  
 4 the department and request a meeting with  
 5 myself and officials to talk about some issues  
 6 that they may have some concerns about.

7 MS. CHAYTOR:  
 8 Q. The annual reports that you've received from  
 9 the four authorities, has there been anything  
 10 in those reports dealing with the ER/PR issue,  
 11 either directly or indirectly?

12 MR. WISEMAN:  
 13 A. There's only been one that has come in that I  
 14 can recall and I, I don't recall it to be  
 15 honest with you, I can't recall if it was  
 16 there or not.

17 MS. CHAYTOR:  
 18 Q. Are they also required to submit a strategic  
 19 plan under the Transparency and Accountability  
 20 Legislation?

21 MR. WISEMAN:  
 22 A. They do have to submit a plan, yes.

23 MS. CHAYTOR:  
 24 Q. And I believe that's a three-year plan. Have  
 25 any strategic plans been submitted to date?

Page 83

1 MR. WISEMAN:  
 2 A. I'm not certain.

3 MS. CHAYTOR:  
 4 Q. The new legislation which you indicated has  
 5 recently been enacted, the Regional Health  
 6 Authorities Act, which I believe came into  
 7 effect April 1st of this year. That was  
 8 originally accented to, however, back in May  
 9 of 2006. Why was there a delay between the  
 10 time of the legislation being accented to and  
 11 coming into effect this year?

12 MR. WISEMAN:  
 13 A. I really can't answer because I don't know, to  
 14 be honest.

15 MS. CHAYTOR:  
 16 Q. Okay. Now Ms. Dawe had indicated to the  
 17 Commissioner that even though the new  
 18 legislation wasn't in effect, that she, as  
 19 chair of Eastern Health and her board  
 20 basically government themselves as though the  
 21 legislation were in effect. Were you aware of  
 22 that?

23 MR. WISEMAN:  
 24 A. I've not formally had that discussion, but  
 25 given the fact that the four authorities were

Page 84

1 all established at the same time back in 2005,  
 2 they all would have been aware of the new  
 3 legislation, it would have been reasonable for  
 4 them to practice under that assumption.

5 MS. CHAYTOR:  
 6 Q. And is that how the department proceeded as  
 7 well on that understanding?

8 MR. WISEMAN:  
 9 A. That's how I would have proceeded, yes.

10 MS. CHAYTOR:  
 11 Q. And the Regional Health Authorities Act, of  
 12 course, repeals the Hospitals Act. What's the  
 13 distinction in terms of the relationship and  
 14 duties outlined in both pieces of legislation?  
 15 You indicated that you felt that the duties of  
 16 the Minister or of the department were more  
 17 clearly outlined, I believe was your words or  
 18 spelled out in a more clear fashion in the new  
 19 legislation. Is it that the duties are just  
 20 more clearly articulated or does the Minister  
 21 in fact have broader powers under the new  
 22 legislation? And again, of course, I'm  
 23 focussing on the Regional Health Authorities,  
 24 which is the focus of that legislation.

25 MR. WISEMAN:

Page 85

1 A. It's spelled out more clearly, but I think one  
 2 of the more fundamental differences and  
 3 distinctions I'd make is in the old  
 4 legislation it really wasn't as clear as what  
 5 authority the Minister could exercise in  
 6 dealing with the authorities themselves. And,  
 7 because fundamentally the authorities have  
 8 been mandated to deal with the operational  
 9 issues and the Minister's office,  
 10 historically, would have gotten involved in  
 11 broader policy issues and not involve  
 12 themselves in operational kinds of decisions.  
 13 But in the new legislation, there's one piece  
 14 of it that makes reference to the  
 15 responsibilities of the authorities and what  
 16 they will do and how they will act, and in  
 17 that, there's a very statement that says that  
 18 they will--and it spells out as "they shall",  
 19 it says "they shall do" and one of the things  
 20 that they shall do is respond to direction  
 21 from the Minister, which is a very clear  
 22 distinction between what was in the previous  
 23 legislation. It's probably the most  
 24 significant statement with respect to the  
 25 authority that's given in legislation to the

Page 86

1 Minister, which didn't exist in the old  
 2 legislation.  
 3 MS. CHAYTOR:  
 4 Q. Yes. And the legislation, the new legislation  
 5 clearly states that the Minister's powers  
 6 include being able to determine which services  
 7 an authority would provide and the standards  
 8 for that service.  
 9 MR. WISEMAN:  
 10 A. Exactly, yes.  
 11 MS. CHAYTOR:  
 12 Q. Okay. And as you point out, it also indicates  
 13 that the Minister may give directions to the  
 14 authority on a number of given issues. As  
 15 Minister, are you the spokesperson for the  
 16 department and I believe on a previous  
 17 occasion when we met, you indicated in terms  
 18 of the public domain, are you the spokesperson  
 19 for your department?  
 20 MR. WISEMAN:  
 21 A. I am, yes.  
 22 MS. CHAYTOR:  
 23 Q. And when you speak on the ER/PR issue, are you  
 24 also the spokesperson for the government?  
 25 MR. WISEMAN:

Page 87

1 A. I am, yes.  
 2 MS. CHAYTOR:  
 3 Q. Mr. Wiseman, the size of your department, just  
 4 tell the Commissioner a bit about that in  
 5 terms of the number of divisions, the  
 6 proportion of the provincial budget that your  
 7 department would consume?  
 8 MR. WISEMAN:  
 9 A. The second question is probably the easiest  
 10 one, from a programming perspective, it  
 11 consumes about 44-45 percent of the program  
 12 funding, the government spends. It's a, by  
 13 definition it's Health and Community Services,  
 14 so it brings together the, you know, acute  
 15 care services, long-term care services and  
 16 community support services, so it's a fairly  
 17 broad-encompassing department, but it provides  
 18 for a seamless integration of health services  
 19 along that full continuum and so out of  
 20 necessity for the co-ordination of services,  
 21 it needs to be that big because of the breadth  
 22 of the services being provided. In terms of  
 23 the divisions, I don't recall an exact number,  
 24 it might be--because within the department  
 25 itself, we have, you know, the MCP system,

Page 88

1 Child Youth and Family Services, Provincial  
 2 Director of Child Youth and Family Services  
 3 and then there is the Prescription Drug  
 4 Program are things that we manage within the  
 5 department itself, and then we have, you know,  
 6 financial administration divisions, but the  
 7 actual delivery of programs and services, you  
 8 know, that the people of Newfoundland and  
 9 Labrador receive, they're being provided  
 10 through our four regional health authorities.  
 11 And the structure of the department itself,  
 12 aligns itself to support the work that the  
 13 four authorities are doing in the provision of  
 14 services. But in addition to that stream of  
 15 supports we have in the department, then we  
 16 have the MCP system, Prescription Drug Program  
 17 and Medical Transportation Program, they are  
 18 operated by the department, out of the  
 19 department with officials there and not done  
 20 through the four authorities.  
 21 MS. CHAYTOR:  
 22 Q. Do you know the total number of divisions?  
 23 MR. WISEMAN:  
 24 A. It was probably fourteen or fifteen or  
 25 something, in that range, and there's probably

1 300 employees.  
 2 MS. CHAYTOR:  
 3 Q. 300 employees, okay. And in terms of the  
 4 health authorities, the health authorities, I  
 5 understand the Board itself would hire the  
 6 CEO. Under the new legislation, I understand  
 7 though that's done with the approval of  
 8 yourself?  
 9 MR. WISEMAN:  
 10 A. It is, yes.  
 11 MS. CHAYTOR:  
 12 Q. Of the Minister of the day.  
 13 MR. WISEMAN:  
 14 A. Yes. The other--go back to your earlier  
 15 question in terms of how we would have  
 16 functioned, the four of the CEO's that were  
 17 appointed and the new structures that were  
 18 created in 2005, they would have been  
 19 recruited by the Health Authority, but the  
 20 contracts that would have hired those CEO's  
 21 would have been co-signed by both the Board  
 22 Chair and the Minister of the day.  
 23 THE COMMISSIONER:  
 24 Q. Ms. Chaytor, it's 11:00, would you like to  
 25 take the morning break at this point?

1 MS. CHAYTOR:  
 2 Q. And who held the position prior to Mr. Keats?  
 3 MR. WISEMAN:  
 4 A. It was being temporary held from around the  
 5 first part of July through to Mr. Keats'  
 6 arrival by Robert Thompson.  
 7 MS. CHAYTOR:  
 8 Q. So July of 2007.  
 9 MR. WISEMAN:  
 10 A. And then prior to that it would have been upon  
 11 my appointment in January, John Abbott was  
 12 still there and he remained there until the  
 13 end of June.  
 14 MS. CHAYTOR:  
 15 Q. So when you arrived into your position on  
 16 January 19th, 2007, John Abbott was the Deputy  
 17 Minister in the department?  
 18 MR. WISEMAN:  
 19 A. Yes, he was.  
 20 MS. CHAYTOR:  
 21 Q. And he remained in that position with you up  
 22 until July of 2007 or was there a period of  
 23 time when the position wasn't filled?  
 24 MR. WISEMAN:  
 25 A. No, he remained with me during that period of

1 MS. CHAYTOR:  
 2 Q. Sure, this is a convenient time.  
 3 THE COMMISSIONER:  
 4 Q. We'll take fifteen minutes.  
 5 (RECESS)  
 6 THE COMMISSIONER:  
 7 Q. Please be seated. Ms. Chaytor?  
 8 MS. CHAYTOR:  
 9 Q. Thank you, Commissioner. Mr. Wiseman, just  
 10 before the break I was about to turn to the  
 11 role of others within your department, you had  
 12 indicated to us the size of the department.  
 13 You stated earlier too that you would  
 14 obviously have a Deputy Minister. Who is your  
 15 current Deputy Minister?  
 16 MR. WISEMAN:  
 17 A. A gentleman by the name of Don Keats.  
 18 MS. CHAYTOR:  
 19 Q. And when did he become your Deputy Minister?  
 20 MR. WISEMAN:  
 21 A. Last year in the fall of the year?  
 22 MS. CHAYTOR:  
 23 Q. So fall of 2007?  
 24 MR. WISEMAN:  
 25 A. Yes.

1 time?  
 2 MS. CHAYTOR:  
 3 Q. And then Mr. Robert Thompson took over?  
 4 MR. WISEMAN:  
 5 A. Yes, it was.  
 6 MS. CHAYTOR:  
 7 Q. And he remained in that position until when?  
 8 MR. WISEMAN:  
 9 A. I'm not sure of the exact date, what happened  
 10 was when Mr. Thompson was filling in on an  
 11 interim basis until we were able to recruit  
 12 somebody and I think it might have been until  
 13 September sometime, it would have been three  
 14 or four months.  
 15 MS. CHAYTOR:  
 16 Q. Okay.  
 17 MR. WISEMAN:  
 18 A. I'm not sure of the exact dates now.  
 19 MS. CHAYTOR:  
 20 Q. And Mr. Abbott left his position in July of  
 21 2007?  
 22 MR. WISEMAN:  
 23 A. I'm saying July, it was either the--I'm just  
 24 thinking now if it was the end of May or the  
 25 end of June, it was around one of those

Page 93

1 months, I'm not sure which now if it was the  
 2 1st of June or 1st of July he would have -  
 3 MS. CHAYTOR:  
 4 Q. Okay, did his departure from the department  
 5 have anything to do with the ER/PR issue or  
 6 the management of the issue?  
 7 MR. WISEMAN:  
 8 A. The issue of Deputy Minister--the Premier  
 9 appoints Deputy Ministers and frequently in  
 10 the public service, Deputy Ministers and  
 11 Assistant Deputy Ministers will change and  
 12 they change as a result of the Premier's call.  
 13 As I understand it, there was change in some  
 14 of the senior level officials at that time and  
 15 there was an offer made to Mr. Abbott to be  
 16 moving to some other department as a Deputy  
 17 and he chose to leave the public service and  
 18 go back into the private sector.  
 19 MS. CHAYTOR:  
 20 Q. Would you be consulted in any change of your  
 21 Deputy Minister?  
 22 MR. WISEMAN:  
 23 A. That's the prerogative of the Premier.  
 24 MS. CHAYTOR:  
 25 Q. Yes, but were you consulted in this

Page 94

1 circumstance?  
 2 MR. WISEMAN:  
 3 A. No, I was advised of when the decision was  
 4 made, but basically it would be the  
 5 prerogative of the Premier.  
 6 MS. CHAYTOR:  
 7 Q. Okay, and my original question being whether  
 8 or not Mr. Abbott's departure from the  
 9 department had anything to do with the  
 10 handling of the ER/PR issue. To your  
 11 knowledge was there any--was that a factor in  
 12 him being transferred from the department?  
 13 MR. WISEMAN:  
 14 A. I wouldn't have any knowledge of the  
 15 rationale, that's a question you may want to  
 16 direct directly to the Premier because it  
 17 would be his decision and his decision only  
 18 and there wouldn't necessarily be any  
 19 consultation with Ministers in and around the  
 20 appointment of their senior people.  
 21 MS. CHAYTOR:  
 22 Q. So you have no knowledge on that issue, one  
 23 way or the other, whether or not it was  
 24 related to the ER/PR issue?  
 25 MR. WISEMAN:

Page 95

1 A. No, the Premier would have that full  
 2 knowledge?  
 3 MS. CHAYTOR:  
 4 Q. And you have no knowledge of that?  
 5 MR. WISEMAN:  
 6 A. If I started to think about why, I mean, I'd  
 7 just be speculating or guessing and it would  
 8 be inappropriate to do that.  
 9 MS. CHAYTOR:  
 10 Q. So you have no knowledge of that?  
 11 MR. WISEMAN:  
 12 A. No.  
 13 MS. CHAYTOR:  
 14 Q. Who is your ADM for Board Services?  
 15 MR. WISEMAN:  
 16 A. Moira Hennessey.  
 17 MS. CHAYTOR:  
 18 Q. And has she been in that position throughout?  
 19 MR. WISEMAN:  
 20 A. She has been, yes.  
 21 MS. CHAYTOR:  
 22 Q. Who is your ADM for Medical Services?  
 23 MR. WISEMAN:  
 24 A. It's currently Dr. Ed Hunt.  
 25 MS. CHAYTOR:

Page 96

1 Q. And has he been in that position since you are  
 2 Minister?  
 3 MR. WISEMAN:  
 4 A. He has been, yes.  
 5 MS. CHAYTOR:  
 6 Q. So he's been there throughout?  
 7 MR. WISEMAN:  
 8 A. Uh-hm.  
 9 MS. CHAYTOR:  
 10 Q. And who is your current Director of  
 11 Communications?  
 12 MR. WISEMAN:  
 13 A. Glenda Power.  
 14 MS. CHAYTOR:  
 15 Q. And how long has Glenda Power been in that  
 16 position?  
 17 MR. WISEMAN:  
 18 A. Since last summer and prior to that it was  
 19 Tansy Mundon.  
 20 MS. CHAYTOR:  
 21 Q. Okay, so when you came to the department in  
 22 January, it was Tansy Mundon was your  
 23 Director?  
 24 MR. WISEMAN:  
 25 A. It was, yes.



Page 97

1 MS. CHAYTOR:  
 2 Q. And then sometime in the summer of 2007,  
 3 Glenda Power took over that position?  
 4 MR. WISEMAN:  
 5 A. Exactly.  
 6 MS. CHAYTOR:  
 7 Q. Do you have a Parliamentary Secretary?  
 8 MR. WISEMAN:  
 9 A. I do, yes.  
 10 MS. CHAYTOR:  
 11 Q. And who is that?  
 12 MR. WISEMAN:  
 13 A. Terry French.  
 14 MS. CHAYTOR:  
 15 Q. And has Terry been in that position since you  
 16 became Minister in January of '07?  
 17 MR. WISEMAN:  
 18 A. Terry's has been in that role since the fall,  
 19 after the fall election of 2007, he was  
 20 appointed as Parliamentary Secretary. For the  
 21 period between January of 2007 until the fall  
 22 election of 2007, there wasn't a Parliamentary  
 23 Secretary in the department.  
 24 MS. CHAYTOR:  
 25 Q. Okay, so you've only had a Parliamentary

Page 98

1 Secretary since last fall?  
 2 MR. WISEMAN:  
 3 A. Exactly yes, right.  
 4 MS. CHAYTOR:  
 5 Q. And is Mr. French assigned any  
 6 responsibilities in terms of the ER and PR  
 7 issue?  
 8 MR. WISEMAN:  
 9 A. No, he's not.  
 10 MS. CHAYTOR:  
 11 Q. Has he had any dealings with the issue at all?  
 12 MR. WISEMAN:  
 13 A. None whatsoever. He may have been as a part  
 14 of any discussion we may have had in recent  
 15 past, he may have been in the room while we  
 16 were having the discussion but has not taken  
 17 an active role in it and as I described  
 18 earlier, Parliamentary Secretaries have a  
 19 variety of roles and Terry and I have had a  
 20 discussion around, you know, some of the files  
 21 that he might be involved with on a go-forward  
 22 basis and he's taken a lead on.  
 23 MS. CHAYTOR:  
 24 Q. Okay, so then when did you first learn about  
 25 the ER/PR issue? I understand from what

Page 99

1 you're telling us you had no involvement or  
 2 dealings with it while you were a  
 3 Parliamentary Secretary. You didn't attend  
 4 Cabinet meetings, you didn't have an updated  
 5 briefing book while you were Parliamentary  
 6 Secretary, so when did you first learn that  
 7 there was such thing as an ER/PR issue?  
 8 MR. WISEMAN:  
 9 A. I would have, you know, as many people in  
 10 Newfoundland and Labrador would have, in the  
 11 fall of 2005 when the issue became a public  
 12 issue in the media at that time and I would  
 13 have had that kind of, you know, knowledge of  
 14 it as was being discussed in the media, in the  
 15 public domain. And that would have been the  
 16 first time that I would have had any knowledge  
 17 of it and what I would have gotten through  
 18 that process is what I would have known.  
 19 MS. CHAYTOR:  
 20 Q. Okay, so it broke in the fall, October 2nd,  
 21 2005, we understand, so your level of  
 22 knowledge on the issue would basically have  
 23 been at that point in time no different than  
 24 any member of the general public?  
 25 MR. WISEMAN:

Page 100

1 A. You're right, yes.  
 2 MS. CHAYTOR:  
 3 Q. And while you were Parliamentary Secretary, I  
 4 meant to ask you this earlier, where was your  
 5 office located?  
 6 MR. WISEMAN:  
 7 A. Adjacent to the Minister's office, there's a  
 8 back hallway on back of the Minister's office  
 9 and I would have been off that hallway.  
 10 MS. CHAYTOR:  
 11 Q. Okay. So it's in the same vicinity as --  
 12 MR. WISEMAN:  
 13 A. Same vicinity, yes, that's right.  
 14 MS. CHAYTOR:  
 15 Q. Okay.  
 16 MR. WISEMAN:  
 17 A. It wouldn't have been part of the Minister's  
 18 Suite.  
 19 MS. CHAYTOR:  
 20 Q. Okay, and do you recall then this issue  
 21 breaking in the media and you heard about it  
 22 in the media? Do you recall then being around  
 23 the Department, do you recall any discussion  
 24 of the topic?  
 25 MR. WISEMAN:

Page 101

1 A. No, I don't.

2 MS. CHAYTOR:

3 Q. And again you weren't involved in any meetings

4 while you were Parliamentary Secretary at that

5 point in time, October, 2005. You didn't

6 attend any meetings, briefings, or have any

7 discussions with anyone in the Department on

8 the issue?

9 MR. WISEMAN:

10 A. I did not.

11 MS. CHAYTOR:

12 Q. Nor were you involved in any written

13 communications on the issue?

14 MR. WISEMAN:

15 A. No, I was not.

16 MS. CHAYTOR:

17 Q. And you didn't have any discussions with any

18 of your former colleagues in the health care

19 sector on the issue?

20 MR. WISEMAN:

21 A. No, I didn't, no.

22 MS. CHAYTOR:

23 Q. So it comes out in the media then in October,

24 2005, and you have no discussions with anyone

25 about the issue at that point in time?

Page 102

1 MR. WISEMAN:

2 A. I may have -- other than a casual observation

3 or casual comment, but I wouldn't have been in

4 any kind of official capacity having a

5 discussion as a part of the Department of

6 Health and Community Services, or in any kind

7 of discussion that would have saw me gaining

8 an understanding or, you know, participating

9 or contributing to a discussion in any

10 fashion. I wouldn't want to give you the

11 impression that I may not have made a casual

12 comment to somebody because it was a media

13 issue. Obviously, you know, when you're a

14 public figure and you're always very curious

15 as to what's making the news and what may be

16 in the day's paper or the evening news, and as

17 things become topical, you may find yourself

18 having a casual exchange about the issue

19 relative to its publication rather than the

20 substance of the issue itself.

21 MS. CHAYTOR:

22 Q. Right, okay.

23 MR. WISEMAN:

24 A. So I may have had a casual conversation like

25 that, but I don't recall it.

Page 103

1 MS. CHAYTOR:

2 Q. Okay, but nothing in your professional

3 capacity?

4 MR. WISEMAN:

5 A. Not at all, no.

6 MS. CHAYTOR:

7 Q. And you did not -- you weren't contacted by

8 any of your constituents, for example, any

9 patients?

10 MR. WISEMAN:

11 A. Not at that time, no.

12 MS. CHAYTOR:

13 Q. Okay, and whatever was going on in the

14 Department in terms of briefing notes on the

15 issue, meetings, or discussions on the issue,

16 you weren't privy to that?

17 MR. WISEMAN:

18 A. I was not, no.

19 MS. CHAYTOR:

20 Q. When you became Minister, what -- for lack of

21 a better word, what orientation did you

22 receive? I realize that you had been in the

23 Department for quite some time at that point

24 in time as the Parliamentary Secretary.

25 MR. WISEMAN:

Page 104

1 A. Yes.

2 MS. CHAYTOR:

3 Q. But what orientation basically did you

4 receive? When did you first learn you were

5 going to become Minister, and what orientation

6 did you receive?

7 MR. WISEMAN:

8 A. You don't get a great deal of notice on

9 becoming Minister, so my --

10 MS. CHAYTOR:

11 Q. So we've heard.

12 MR. WISEMAN:

13 A. So my invitation into the Cabinet occurred one

14 evening, as I was sworn in the next morning.

15 So that would have -- things would have

16 unfolded from there. Obviously, you know, as

17 you've just indicated, I had been in the

18 Department, so an understanding of how the

19 Department was structured and the individuals

20 involved, you know, the normal introductions

21 and those sorts of things wouldn't have

22 occurred. So my orientation would have been

23 very different than maybe the previous

24 Ministers coming into it because of that

25 familiarity with the Department and the

Page 105

1 individuals involved, and it would have been -  
 2 - there's a binder that's created that  
 3 profiles the Department, gives you an overview  
 4 of who's what and Department structured  
 5 programs and services and things, which is a  
 6 general information binder. Then there would  
 7 have been a binder that would have been there  
 8 with a group of briefing notes that would have  
 9 prepared a Minister for what might be the  
 10 issues that the Department is either dealing  
 11 with now or that the Department has dealt with  
 12 in the past. That briefing book would have  
 13 been there as well.

14 MS. CHAYTOR:  
 15 Q. Okay. In terms of the individuals, and you  
 16 said, of course, you knew a lot of the key  
 17 people, or I'll call them key people in the  
 18 Department at that point in time, so John  
 19 Abbott still would have been there at the  
 20 time. Had you worked with John Abbott prior  
 21 to becoming Minister?

22 MR. WISEMAN:  
 23 A. No. I mean, I had met John in the past. As  
 24 part of my earlier career working in the  
 25 health system, I had run -- John and I had

Page 106

1 crossed paths at either meetings or as part of  
 2 a working group on a couple of projects that  
 3 both him and I had been involved with at one  
 4 point.

5 MS. CHAYTOR:  
 6 Q. And what would Mr. Abbott's role have been? I  
 7 take it, this would have been while you were  
 8 with Clarendville Area Board?

9 MR. WISEMAN:  
 10 A. Mr. Abbott was -- had been involved -- I  
 11 believe, at one point he was a -- he held  
 12 several Deputy Minister and Assistant Deputy  
 13 Minister positions within Government prior to  
 14 him becoming the Deputy in the Department of  
 15 Health and Community Services, and so during  
 16 that time I had -- you know, we had crossed  
 17 paths professionally through that process  
 18 several times and I had been aware that he was  
 19 the Chairman of the Board of the St. John's  
 20 Health Care Corporation at one time.

21 MS. CHAYTOR:  
 22 Q. The predecessor to --

23 MR. WISEMAN:  
 24 A. Predecessor to Eastern Health.

25 MS. CHAYTOR:

Page 107

1 Q. And you would have had dealings with him in  
 2 his capacity as Chair as well?

3 MR. WISEMAN:  
 4 A. No, I wouldn't have, just I had that knowledge  
 5 of him. I think at that time he was the Chair  
 6 and I might have been the Opposition Health  
 7 critic.

8 MS. CHAYTOR:  
 9 Q. And in terms of your working relationship then  
 10 with him once you became Minister, how would  
 11 you describe that?

12 MR. WISEMAN:  
 13 A. We would have become very close very quickly.  
 14 The Deputy is one of the key people in your  
 15 organization and you work very closely with  
 16 your Deputy.

17 MS. CHAYTOR:  
 18 Q. And that was true of Mr. Abbott and yourself?

19 MR. WISEMAN:  
 20 A. It was, yes.

21 MS. CHAYTOR:  
 22 Q. And did you rely on Mr. Abbott to keep you  
 23 apprised of issues?

24 MR. WISEMAN:  
 25 A. Very much so, yes.

Page 108

1 MS. CHAYTOR:  
 2 Q. And that's true, I take it, of Mr. Thompson  
 3 and now Mr. Keats as well?

4 MR. WISEMAN:  
 5 A. You're absolutely right, yes.

6 MS. CHAYTOR:  
 7 Q. And Moira Hennessey is the ADM for Board  
 8 Services?

9 MR. WISEMAN:  
 10 A. Yes.

11 MS. CHAYTOR:  
 12 Q. Did you have any working relationship with her  
 13 prior to becoming Minister?

14 MR. WISEMAN:  
 15 A. We had never -- I mean, I had known of Moira  
 16 mostly by reputation prior to going into  
 17 political life, so I knew her as a -- when I  
 18 worked in the health system, and I just forget  
 19 what capacity she may have had at that time,  
 20 but I remember her, but mostly by reputation.  
 21 While I was in Opposition, I was aware that  
 22 she had that role. There may have been a few  
 23 occasions where in carrying out your function  
 24 as a critic, you may have been looking for  
 25 information and Moira might have been someone

Page 109

1 who you knew would have had that information.  
 2 MS. CHAYTOR:  
 3 Q. And as an Opposition critic, you would be able  
 4 to phone her and receive information from her?  
 5 MR. WISEMAN:  
 6 A. Not necessarily directly like that. I mean,  
 7 just that you -- I mean, obviously, the ADM of  
 8 a Department, you know, would be someone who  
 9 would provide briefing periodically too on an  
 10 issue if you requested as an Opposition  
 11 critic, but I was aware that Moira had that  
 12 role as an Assistant Deputy Minister.  
 13 MS. CHAYTOR:  
 14 Q. And your relationship then with her when you  
 15 become Minister, how would you describe your  
 16 working relationship with Moira?  
 17 MR. WISEMAN:  
 18 A. I had a very close working relationship with  
 19 her. In her role as the ADM for Board  
 20 Services, if you look within the Department of  
 21 Health and Community Services when they talked  
 22 earlier about how the Department is  
 23 structured, the Health Authorities deliver the  
 24 programs and services that people in the  
 25 province receive. So the boards themselves

Page 110

1 spend the bulk of the Department of Health and  
 2 Community Services budget. I said earlier  
 3 that we spend about 44/45 percent of  
 4 Government's program money, and the bulk of  
 5 that is spent by the Authorities. So,  
 6 obviously, in terms of the programs and  
 7 services, the ADM of Board Services is  
 8 somebody you have maybe a more frequent  
 9 contact with than you might have with some of  
 10 the other ADMs.  
 11 MS. CHAYTOR:  
 12 Q. And in her role, she would be the liaison  
 13 between the Department and the Boards?  
 14 MR. WISEMAN:  
 15 A. And the Authorities, yes.  
 16 MS. CHAYTOR:  
 17 Q. And the Authorities, I should say, yes.  
 18 MR. WISEMAN:  
 19 A. Well, in terms of that, I wouldn't necessarily  
 20 characterize it as being the liaison. The  
 21 Deputy has a very close working relationship  
 22 with the CEOs of the Authorities.  
 23 MS. CHAYTOR:  
 24 Q. Yes.  
 25 MR. WISEMAN:

Page 111

1 A. The ADM would also have a relationship with  
 2 the CEO, but the ADM might also have a  
 3 relationship with some of the other VPs within  
 4 the four Authorities in discussing a program  
 5 level activity.  
 6 MS. CHAYTOR:  
 7 Q. So in terms of the information flow from any  
 8 given authority to the Department, it could  
 9 happen through the DM communicating mostly  
 10 with the CEO, or the ADM communicating with  
 11 the CEO or other VPs within the Authority?  
 12 MR. WISEMAN:  
 13 A. That's right.  
 14 MS. CHAYTOR:  
 15 Q. Those are the normal lines of communication?  
 16 MR. WISEMAN:  
 17 A. That would normally happen, yes.  
 18 MS. CHAYTOR:  
 19 Q. And what would your normal line of  
 20 communication be if you were to consult or  
 21 confer with somebody in the Authorities?  
 22 MR. WISEMAN:  
 23 A. Generally it will be with the Board Chair, but  
 24 it wouldn't be uncommon for me to make contact  
 25 directly with the CEO.

Page 112

1 MS. CHAYTOR:  
 2 Q. Okay, and in terms of the normal course of you  
 3 receiving information relating to the  
 4 Authorities, who would you rely on to get you  
 5 that information?  
 6 MR. WISEMAN:  
 7 A. The Deputy, or in the ADMs case as well, it  
 8 might be either/or.  
 9 MS. CHAYTOR:  
 10 Q. Okay. So in terms of your orientation then,  
 11 you were familiar you told us with a number of  
 12 the individuals prior to coming to the  
 13 Department or while you were working in the  
 14 Department, either/or, and you also received a  
 15 general binder outlining the Department and  
 16 the workings of the Department and also a  
 17 briefing book when you became Minister. Do  
 18 you recall how many briefing notes would have  
 19 been in your binder at the time of commencing  
 20 your role?  
 21 MR. WISEMAN:  
 22 A. I wouldn't be able to recall, to be honest.  
 23 My orientation was influenced by, I guess, two  
 24 things. One I just shared with you is the  
 25 fact that I had been there, so that made a bit

Page 113

1 of a difference. The other piece, the timing  
 2 when I went to -- and they're somewhat related  
 3 in some respects. When I went into the  
 4 Department in mid January, the Government was  
 5 very much intensely involved in their  
 6 budgetary process, and so there was a -- the  
 7 Department had already made its submission  
 8 through the budgetary process that starts in  
 9 the fall and has worked its way through the  
 10 system. So when I became Minister in mid  
 11 January, the Department's budget submissions  
 12 had already been into the system. A fair bit  
 13 of discussion was taking place in and around  
 14 the budget itself, and as a Minister, you have  
 15 a responsibility to be able to speak to each  
 16 and every issue that your Department has  
 17 submitted in the budget process and to be able  
 18 to defend the amount of money that you're  
 19 asking for. So that was a -- so on my  
 20 initially going into the Department, my focus  
 21 wasn't so much on getting an orientation per  
 22 se, as to was to getting up to speed on a  
 23 couple of critical issues that were being  
 24 dealt with at that moment. The biggest piece  
 25 of work was the budget itself, and that was a

Page 114

1 very time consuming process because I now  
 2 needed to get up to speed on some things that  
 3 had been discussed in the Department dating  
 4 back to the fall. I was coming on the scene  
 5 kind of late in the budget process, but needed  
 6 to be able to speak to it with my Cabinet  
 7 colleagues with the same degree of insight and  
 8 knowledge that I would have had I been there  
 9 for months earlier. So that consumed a large  
 10 part of my time, and tied to that in some  
 11 respects, you know, last year there was a  
 12 major investment we made as a Government in  
 13 the area of Child Youth and Family Services  
 14 and there were two major pieces of work that  
 15 had just gone on. There was an organizational  
 16 review of the Child Youth and Family Services  
 17 Program, there had been the report into the  
 18 death of Zachary Turner, and that was -- both  
 19 of these major pieces of work were informing  
 20 what we were doing with the investments we'd  
 21 be making in Child Youth and Family Services,  
 22 and some improvements we needed to make in  
 23 that area. So they -- those two issues, you  
 24 know, consumed my initial part of going into  
 25 the Department. That kind of defined how I

Page 115

1 approached the orientation, which may have  
 2 been a little different than other Ministers  
 3 going into Departments.  
 4 MS. CHAYTOR:  
 5 Q. Okay. So I take it from what you're telling  
 6 us, those two issues were of such a magnitude  
 7 they consumed most of your time and --  
 8 MR. WISEMAN:  
 9 A. And I didn't take the -- for example, I didn't  
 10 take the briefing book and start to read it  
 11 from cover to cover.  
 12 MS. CHAYTOR:  
 13 Q. That's what I was going to ask you. You had a  
 14 briefing book, but I take it you didn't read  
 15 through the briefing notes?  
 16 MR. WISEMAN:  
 17 A. And it may have been -- in fact, I may have  
 18 been there for some time before I would have  
 19 turned my head to the briefing notes. I would  
 20 have turned my head to the briefing notes in  
 21 preparation for the House of Assembly opening.  
 22 MS. CHAYTOR:  
 23 Q. And when would that have been?  
 24 MR. WISEMAN:

Page 116

1 A. That would have been just before Easter last  
 2 year, and so then in preparation for the House  
 3 of Assembly, I would have turned my --  
 4 MS. CHAYTOR:  
 5 Q. So three or four months into your time --  
 6 MR. WISEMAN:  
 7 A. It would have been, yes.  
 8 MS. CHAYTOR:  
 9 Q. As Minister, before you would have turned your  
 10 mind to the briefing notes.  
 11 MR. WISEMAN:  
 12 A. I'm not sure of the exact timeframe. It would  
 13 have been just prior to the Easter period the  
 14 House would have sat, so I would have turned  
 15 my head to the briefing books then, and that  
 16 was purely -- again not to read it cover to  
 17 cover, but purely to understand some of the  
 18 things that were in the briefing book that  
 19 were either topical at the time or that I  
 20 needed to be able to speak to if questioned in  
 21 the House of Assembly.  
 22 MS. CHAYTOR:  
 23 Q. So if there were a briefing note in the binder  
 24 on the ER/PR issue, that didn't come to your  
 25 attention until two or three months into your

Page 117

1 time as Minister?  
 2 MR. WISEMAN:  
 3 A. If your question is -- if you're trying to  
 4 establish when I was seized with this issue,  
 5 it was -- I can jump right to that. It was  
 6 May 15th, the middle of May.  
 7 MS. CHAYTOR:  
 8 Q. In 2007?  
 9 MR. WISEMAN:  
 10 A. In 2007, when this became a public issue in a  
 11 radio news item, and I then turned my head to  
 12 it.  
 13 MS. CHAYTOR:  
 14 Q. Yes, okay, and whether there was a briefing  
 15 note before that, you hadn't seen it?  
 16 MR. WISEMAN:  
 17 A. I mean, I may -- if I'm scanning a book and I  
 18 saw the ER/PR note, I would have seen it and  
 19 acknowledged its presence, but recognized that  
 20 this was an issue that had happened some time  
 21 ago, it was something that -- this might have  
 22 been a briefing note to give me some insight  
 23 as to where it was now, but it wasn't an issue  
 24 that I needed to be dealing with right now  
 25 today, it had been dealt with by former

Page 118

1 Ministers, and there was nothing current on  
 2 the file that needed my attention or action at  
 3 this particular point.  
 4 MS. CHAYTOR:  
 5 Q. And even that scanning of the briefing book,  
 6 that didn't happen for a couple of months into  
 7 your time as Minister?  
 8 MR. WISEMAN:  
 9 A. Exactly, yes.  
 10 MS. CHAYTOR:  
 11 Q. And then if you looked through, you would have  
 12 just looked at it and considered that that was  
 13 an issue that had been dealt with by your  
 14 predecessors?  
 15 MR. WISEMAN:  
 16 A. Exactly.  
 17 MS. CHAYTOR:  
 18 Q. So I take it the issue -- obviously, the  
 19 Zachary Turner issue was seen as a critical  
 20 issue at the time, and if the ER/PR issue had  
 21 been seen to be of that magnitude or  
 22 importance in the Department at the time, it  
 23 would have been brought to your attention?  
 24 MR. WISEMAN:  
 25 A. Well, just to make a comparison, both issues

Page 119

1 obviously are significant issues, but with the  
 2 Child Youth and Family Services file, we  
 3 needed to -- I needed to be informed to be  
 4 able to speak to the issue as part of the  
 5 budgetary process. We had two major reports;  
 6 one, an operational review, and one on the --  
 7 an organizational review of the Child Youth  
 8 and Family Services and the Zachary Turner  
 9 Report. I needed to understand both of them  
 10 to be able to then work with our officials to  
 11 define what might be a strategy and what might  
 12 -- our response strategy, and what investments  
 13 did we need to make and what changes needed to  
 14 be made in the organization to better provide  
 15 a services to that population of the province  
 16 and to strengthen that area. In terms of the  
 17 importance, it was important at that moment  
 18 because decisions needed to be made and I  
 19 needed to be informed to make those decisions.  
 20 MS. CHAYTOR:  
 21 Q. Okay. I take it that if it were -- if the  
 22 ER/PR issue was still a burning issue within  
 23 your Department and on, for lack of a better  
 24 word again or the phrase, the radar screen of  
 25 the officials in your Department, I take it,

Page 120

1 it would have been brought to your attention  
 2 regardless of whatever else you're having to  
 3 deal with?  
 4 MR. WISEMAN:  
 5 A. I'm confident it would have. If there was an  
 6 action required, then I'm certain that they  
 7 would have brought it to my attention.  
 8 MS. CHAYTOR:  
 9 Q. Okay. In the budget process at the stage that  
 10 the budgeting process was at when you became  
 11 Minister, I take it any submissions from the  
 12 Authorities had already been in and dealt with  
 13 through the Department, is that right?  
 14 MR. WISEMAN:  
 15 A. Would have been, yes.  
 16 MS. CHAYTOR:  
 17 Q. Would have been. When does that normally  
 18 happen, what's the timeframe, when would the  
 19 Authorities have their submissions in to  
 20 Government for the following year's budget?  
 21 MR. WISEMAN:  
 22 A. Building the budget process, that starts in  
 23 the fall of the year. In Health and Community  
 24 Services, for example, the Health Authorities  
 25 will start in the early fall to start

Page 121

1 identifying what they believe to be some of  
 2 their financial requirements for the upcoming  
 3 fiscal year, and they will identify them in a  
 4 variety of categories and submit that to the  
 5 Department. The Department then internally  
 6 will have its own -- because the Department  
 7 itself has some functions that it carries out,  
 8 will identify some of their budget  
 9 requirements at the officials level, and that  
 10 forms a composite summary then of what it is -  
 11 - it's the wish list, it's the shopping list  
 12 from both the Authorities and within the  
 13 Department of Health and Community Services  
 14 itself. So then starts an exercise of looking  
 15 at realistically what can be accomplished in  
 16 this particular fiscal year that's coming up,  
 17 and so you start looking at what become the  
 18 priorities then for funding, what programs  
 19 have -- not so much the greatest need, but  
 20 based on where the objectives would be for  
 21 each of the Authorities, what the plan would  
 22 be for new initiatives, and within the fiscal  
 23 capacity of the province you start looking at  
 24 what that list would look like. So there's a  
 25 paring down exercise starts in the fall of the

Page 122

1 year and it works its way through a budget at  
 2 the end of the day that gets announced in the  
 3 spring.  
 4 MS. CHAYTOR:  
 5 Q. And the first budget then that you dealt with  
 6 in the spring of 2007, were you aware of any  
 7 issues that may have been identified by the  
 8 Authorities as being critical to them in that  
 9 particular budget process? For example, were  
 10 you --  
 11 MR. WISEMAN:  
 12 A. Relative to ER/PR?  
 13 MS. CHAYTOR:  
 14 Q. Yeah, were you aware of any issue regarding,  
 15 for example, pathologist remuneration through  
 16 the budgeting process?  
 17 MR. WISEMAN:  
 18 A. The whole issue of the physician remuneration  
 19 piece, I would have been aware that there was  
 20 a report being prepared or it was prepared  
 21 around the position of compensation, and that  
 22 was an issue that was being dealt with between  
 23 the Department officials and officials within  
 24 Treasury Board as to what might be an  
 25 appropriate compensation and stipend to be

Page 123

1 paid to the pathologists.  
 2 MS. CHAYTOR:  
 3 Q. And when would you have become aware of that  
 4 as an issue?  
 5 MR. WISEMAN:  
 6 A. I'm not certain if it came about as a result  
 7 of the budgetary process itself per se, but it  
 8 would have come about as a result of a  
 9 discussion around issues that were before us  
 10 that had some financial implications, but I  
 11 wouldn't want to suggest to you that it was in  
 12 the budget submission because I'm not certain  
 13 of that.  
 14 MS. CHAYTOR:  
 15 Q. Okay. I'll talk to you some more later on  
 16 about the issue around pathologist  
 17 remuneration, but I'm just trying to get a  
 18 sense in terms of the budget process, and in  
 19 those first couple of months of your tenure as  
 20 Minister what you would have been aware of as  
 21 the concerns from a budgetary point of view  
 22 from the Authorities. I guess, another one  
 23 that would come to mind would be any issues  
 24 for additional funding for quality assurance  
 25 programs for the Authorities. Were you aware

Page 124

1 of that during the first budget that you would  
 2 have been dealing with?  
 3 MR. WISEMAN:  
 4 A. There would have been a variety of Health  
 5 Authority related issues. Some of them would  
 6 have to do with the increased pressure for  
 7 service, some of them would have to do with  
 8 inflationary costs, some of them would have to  
 9 do with infrastructure, some of them would  
 10 have to do with technology equipment, some of  
 11 them would have to do with enhancing various  
 12 programs or expanding various programs, and  
 13 some of them would deal with quality assurance  
 14 issues, technology issues, information  
 15 management issues. So there would have been a  
 16 long list of those types of requests that each  
 17 of the Authorities would have had.  
 18 MS. CHAYTOR:  
 19 Q. And whether or not any of those related to the  
 20 ER/PR issue during the budgetary process, that  
 21 wasn't brought to your attention?  
 22 MR. WISEMAN:  
 23 A. That wouldn't have come up, no -- didn't come  
 24 up.  
 25 MS. CHAYTOR:

Page 125

1 Q. And information management, though, that was  
 2 an issue for the Authorities in the first  
 3 budget that you were involved in?  
 4 MR. WISEMAN:  
 5 A. The issue of technology, and expansion of  
 6 technology, and the expanded use of  
 7 technology, that was part of a discussion.  
 8 MS. CHAYTOR:  
 9 Q. Okay. So technology, for example, within lab  
 10 medical services or are you talking  
 11 information technology?  
 12 MR. WISEMAN:  
 13 A. More generic -- the technology that would be -  
 14 - if we were talking about technology used in  
 15 the laboratory, then we would have been  
 16 talking about that in the context of  
 17 equipment.  
 18 MS. CHAYTOR:  
 19 Q. Right. So when you say "technology", I'm just  
 20 wondering when was -- the issue of information  
 21 management and additional funding for  
 22 information management systems, when was that  
 23 brought to your attention? Was that during  
 24 that first budgetary process?  
 25 MR. WISEMAN:

Page 126

1 A. I think it would have come up during that  
 2 discussion, but we wouldn't have, at least I  
 3 don't recall it, having zeroed in on each and  
 4 every authority and saying here's what the  
 5 unique issues are within each of these  
 6 Authorities. So relative to ER/PR or other  
 7 aspects of information management, I wouldn't  
 8 have necessarily drilled down in terms of its  
 9 application.  
 10 MS. CHAYTOR:  
 11 Q. But the Authorities were seeking additional  
 12 funding for information management through the  
 13 first budgetary process that you were involved  
 14 in?  
 15 MR. WISEMAN:  
 16 A. I'm trying to recall the detail that I would  
 17 have had at that particular time. I think we  
 18 -- I would have been aware that the Health  
 19 Authorities would have wanted in their budget  
 20 some additional consideration for computer  
 21 technology and information management systems.  
 22 What that would be used for and what systems  
 23 they were talking about bringing together, I  
 24 don't know if I would have in my discussion of  
 25 the budget drilled down to that level of

Page 127

1 detail. That level of detail would have been  
 2 dealt with already by officials in the  
 3 Department and with officials of each of the  
 4 four Authorities. So that --  
 5 MS. CHAYTOR:  
 6 Q. Which would have been some time back in the  
 7 fall?  
 8 MR. WISEMAN:  
 9 A. It would have been some time back --  
 10 MS. CHAYTOR:  
 11 Q. Back in the fall of 2006, and I'm just  
 12 wondering then in the fall of 2006 then, the  
 13 Authorities had identified that they required  
 14 additional funding for information management,  
 15 and perhaps earlier than that, but at least  
 16 then if it's in the budget submission that's  
 17 going forward in the spring of 2007?  
 18 MR. WISEMAN:  
 19 A. They may have -- just so that you get a feel  
 20 for the process, and I'm not trying to be  
 21 vague with my answer in terms of what I would  
 22 have known because the process of building the  
 23 budget would have been initially that each of  
 24 the Health Authorities would have identified a  
 25 list of things that they wanted to pursue in

Page 128

1 the upcoming fiscal year, and that list would  
 2 have been relatively long, I suspect, and then  
 3 they submit that to the Department, and the  
 4 Department officials working with the  
 5 officials of the Authority recognize -- come  
 6 to an understanding that, well, some of these  
 7 things are not going to be doable in the  
 8 coming year because the list is too long,  
 9 together with what we have across Government,  
 10 you know, this will result in an increase in  
 11 the health budget beyond what we can expect in  
 12 this coming year. So there's kind of a  
 13 negotiation or discussion that occurs to start  
 14 taking out some of these things and looking at  
 15 and prioritizing them, and that goes through  
 16 several stages. So there's a first cut, a  
 17 first draft, and so a bunch of things would  
 18 come out at the very beginning of that  
 19 exercise, and as the officials work through  
 20 it, other things get taken out. So there's an  
 21 agreement that maybe we can not do that this  
 22 year, we'll defer it to some other year. So  
 23 that dialogue takes place at the officials  
 24 level. When I appeared on the scene in  
 25 January, mid January, you know, what I



Page 129

1 recognized I had before me was what was left  
 2 for discussion based on all this other stuff  
 3 having been removed earlier in the dialogue.  
 4 I wouldn't have gone back and revisited each  
 5 of those items to say, well, maybe you  
 6 shouldn't have taken that out, let's bring it  
 7 back in, because I would have understood that  
 8 that would have happened as a result of a  
 9 dialogue between the Authorities themselves  
 10 and officials in the Department.  
 11 MS. CHAYTOR:  
 12 Q. Yes.  
 13 MR. WISEMAN:  
 14 A. So there was a consensus, if you will, on that  
 15 point. So what I'm left with her at the end  
 16 of the day when I get on the scene is a budget  
 17 category that deals with the four Health  
 18 Authorities collectively, that talks about  
 19 their unique pressures, and that's the  
 20 heading, actually, it's unique pressures, and  
 21 under that heading of unique pressures there  
 22 would have been things like information  
 23 technology.  
 24 MS. CHAYTOR:  
 25 Q. Okay. So information technology was one of

Page 130

1 the things identified to you during that first  
 2 budget process?  
 3 MR. WISEMAN:  
 4 A. I'm pretty confident that it was.  
 5 MS. CHAYTOR:  
 6 Q. Yes.  
 7 MR. WISEMAN:  
 8 A. I wouldn't want to give you the sense that it  
 9 was categorized and framed like that, but the  
 10 --  
 11 MS. CHAYTOR:  
 12 Q. But to the best of your recollection --  
 13 MR. WISEMAN:  
 14 A. To the best of my recollection, information  
 15 systems would have been a part of that piece  
 16 back last year, yes.  
 17 MS. CHAYTOR:  
 18 Q. And that they were looking for additional  
 19 funding for that?  
 20 MR. WISEMAN:  
 21 A. Yes, and that would have been for all the four  
 22 Authorities.  
 23 MS. CHAYTOR:  
 24 Q. And Mr. Wiseman, we know through this process  
 25 eventually there is an increase for the

Page 131

1 pathologists and you're involved in that  
 2 process. The pathologist stipend or the  
 3 oncology stipend for pathologists, was that  
 4 put forward in the budget submission, the  
 5 first budget submission that you dealt with?  
 6 MR. WISEMAN:  
 7 A. I'm not certain if it was a line item in the  
 8 budget process itself. I knew it was an issue  
 9 that we were trying to work through together  
 10 with officials in the Department and officials  
 11 in Treasury Board in terms of what that  
 12 stipend should be, but I wouldn't say with  
 13 some certainty that I can see it or visualize  
 14 it as being a line item in a budget document  
 15 that I had before me.  
 16 MS. CHAYTOR:  
 17 Q. Was it included in that budget in 2007 or was  
 18 it additional money that the Department had to  
 19 come up with later in the day?  
 20 MR. WISEMAN:  
 21 A. I think--I can't recall if it was an actual  
 22 allocation of funding to deal with  
 23 pathologists or whether was it something that  
 24 we would acknowledge that we would--when it  
 25 got settled, we would have dealt with within

Page 132

1 our global budget.  
 2 CHAYTOR, Q.C.:  
 3 Q. Because this issue, from what was understand,  
 4 was going on some time, certainly -  
 5 MR. WISEMAN:  
 6 A. Yes.  
 7 CHAYTOR, Q.C.:  
 8 Q. - some time before you were Minister?  
 9 MR. WISEMAN:  
 10 A. It had been, yes, it had been.  
 11 CHAYTOR, Q.C.:  
 12 Q. So I'm wondering if it was put forward as part  
 13 of the budget's submission, the first budget  
 14 that you dealt with, and if not, why not?  
 15 MR. WISEMAN:  
 16 A. I'm not certain if it was--because sometimes  
 17 in the budgetary process, you know, if we  
 18 believe that there is an item in the budget or  
 19 that we need to get funded--let me just use by  
 20 way of illustration, we'll have a budget  
 21 coming down in a short while and the Minister  
 22 of Finance will read the budget. And as a  
 23 result of that, the Department of Health and  
 24 Community Service will get an allocation and  
 25 in that budget, you know, there'll be a number

Page 133

1 of things that will be identified as being  
 2 funded with the new money added to this year's  
 3 budget. But also in this budget coming down,  
 4 we know as a Department that there are some  
 5 things that there is no new money for in this  
 6 budget. So there's not an announcement of an  
 7 increase of X number of dollars to fund a  
 8 particular item, but we recognize ourselves  
 9 internally that there are some things that we  
 10 will do because we have some flexibility in  
 11 our current budget to respond to it. So it  
 12 need not be identified as an item in the  
 13 budget and it need not be an item that  
 14 requires additional funding in the budget  
 15 allocation to deal with. So I'm just using  
 16 that to illustrate why a pathologists increase  
 17 in salaries may not have ended up as a budget  
 18 item to be submitted in the budget process to  
 19 say that we need X numbers of hundreds of  
 20 thousands of dollars to pay for an increase in  
 21 salaries for pathologists because we might  
 22 recognize that it's coming, there is going to  
 23 be an adjustment, but we recognize that we  
 24 have flexibility in our existing base budget  
 25 to deal with that. So I don't recall whether

Page 134

1 or not it was an actual item that we had asked  
 2 for as a, in the budgetary process or it was  
 3 an item that we were acknowledging that we  
 4 could deal with within our current fiscal  
 5 budget, fiscal framework.  
 6 CHAYTOR, Q.C.:  
 7 Q. But it was certainly an item which was  
 8 recognized and you knew was, as you say -  
 9 MR. WISEMAN:  
 10 A. Yes, no question.  
 11 CHAYTOR, Q.C.:  
 12 Q. - coming down. No question. And whether or  
 13 not it was part of a lined item in your budget  
 14 or whether or not it was in the back of your  
 15 mind that this is an issue we can deal with  
 16 through other means -  
 17 MR. WISEMAN:  
 18 A. Yes. And that's not an uncommon practice.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay. You could find out the answer to that  
 21 for me, though?  
 22 MR. WISEMAN:  
 23 A. Oh, sure.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay. If you could do that because we're--I'm

Page 135

1 not going to finish up this morning, so if you  
 2 wouldn't mind checking on that and letting me  
 3 know?  
 4 THE COMMISSIONER:  
 5 Q. Just, Minister, to make sure I understand,  
 6 when you talk about the flexibility in the  
 7 budget, are you talking about the transferring  
 8 from one subhead within your budget where you  
 9 might feel you have funds that will not  
 10 necessarily be needed over the course of the  
 11 year to another subhead, which would be the  
 12 one under which payments to pathologists would  
 13 be made?  
 14 MR. WISEMAN:  
 15 A. That could be. The other thing could be a  
 16 circumstance where within the current budget  
 17 fiscal framework, within physician  
 18 compensation, for example, there's an MCP  
 19 pocket of money and there's a salaried  
 20 physicians pocket of money.  
 21 THE COMMISSIONER:  
 22 Q. Um-hm.  
 23 MR. WISEMAN:  
 24 A. And so within those subheads we may have  
 25 recognized that we'd have enough capacity to

Page 136

1 be able to accommodate it, so it wouldn't  
 2 necessarily be a matter of transferring from a  
 3 subhead to a subhead.  
 4 THE COMMISSIONER:  
 5 Q. Okay.  
 6 MR. WISEMAN:  
 7 A. It might fall in that category.  
 8 THE COMMISSIONER:  
 9 Q. Thank you.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay. So I'll just go back then now to the  
 12 ER/PR issue. And I understand that you didn't  
 13 receive any briefing on it when you became  
 14 Minister. There may have been a briefing note  
 15 arrive in your briefing book at some point or  
 16 been a briefing note in the book and that you  
 17 would have scanned through in the first, after  
 18 a couple of months in your position. And so  
 19 none of your officials spoke to you about the  
 20 ER/PR issue up to that point in time to advise  
 21 you of the status of the issue?  
 22 MR. WISEMAN:  
 23 A. No.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay. And then you indicated then in May, May

Page 137

1 15th stands out in your mind. So what  
 2 happened on May 15th to direct your attention  
 3 to the issue for the first time?  
 4 MR. WISEMAN:  
 5 A. There was a, as I recall it, there was a--that  
 6 morning there was a media story that was  
 7 carried on one of the radio stations about the  
 8 fact that some information that had been, you  
 9 know, garnered by the media outlet through a  
 10 search of court records revealed that  
 11 information that had been, you know, earlier  
 12 communicated publicly had been incomplete.  
 13 That was the gist of it as I understand it.  
 14 And so that morning I assembled officials to  
 15 start having a discussion around what this was  
 16 all about and where we were and what the story  
 17 was, and so I got up to speed on the file very  
 18 quickly. And so that was my first intense  
 19 discussion around this whole issue.  
 20 CHAYTOR, Q.C.:  
 21 Q. Okay. And so on May 15th then after hearing a  
 22 media story you gathered the officials  
 23 together. I take it then between, from  
 24 January up to that point in time, May 15th,  
 25 2007 you hadn't been briefed by your

Page 138

1 officials, you say, beforehand. The House had  
 2 opened before that. No questions or nothing  
 3 arose in the House regarding the issue before  
 4 that?  
 5 MR. WISEMAN:  
 6 A. No.  
 7 CHAYTOR, Q.C.:  
 8 Q. No, okay. And so all was quiet on the ER/PR  
 9 issue. And I believe you indicated that you  
 10 felt or thought or assumed that your  
 11 predecessors had dealt with the issue, is that  
 12 right?  
 13 MR. WISEMAN:  
 14 A. That would have been correct, yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay. And what was it that made you think  
 17 that?  
 18 MR. WISEMAN:  
 19 A. Well, I mean, the issue of--and I hadn't  
 20 necessarily thought, well, ER/PR is one of  
 21 these things that my officials--it was in the  
 22 briefing book, obviously, it was one of the  
 23 notes that was in the briefing book. And  
 24 anything that wouldn't have been, currently  
 25 have been an issue that needed some attention

Page 139

1 in the Department and it had been an issue  
 2 that had surfaced in the past. And as I said  
 3 to you earlier, I became aware in the fall of  
 4 2005 about the issue in the public, the same  
 5 way as the general public would have, so  
 6 obviously, you know, when I became Minister,  
 7 recognized that my predecessors had dealt with  
 8 the issue. And when the issue was in the  
 9 briefing book, but I would have, my reaction  
 10 would have been, and I--as I saw a note on  
 11 ER/PR would have casually thought, well,  
 12 that's an issue that had been dealt with by my  
 13 predecessor, it's not an issue that's  
 14 currently being discussed, not an issue  
 15 somebody has brought to my attention as being  
 16 needing an immediate attention or decision to  
 17 be made on it and I would have just passed  
 18 over it and moved on to some other note that I  
 19 wanted to read in more detail.  
 20 CHAYTOR, Q.C.:  
 21 Q. When you became Minister, did you receive any  
 22 kind of a briefing from Mr. Osborne?  
 23 MR. WISEMAN:  
 24 A. No, I did not.  
 25 CHAYTOR, Q.C.:

Page 140

1 Q. And did you have, up to this point in time,  
 2 May 15th, 2007, any discussions with Mr.  
 3 Osborne on the ER/PR issue?  
 4 MR. WISEMAN:  
 5 A. Other than what I would have had as a part of  
 6 a, you know, as a part of a Cabinet decision  
 7 in, I think it was 16th or 17th of, 17th, if I  
 8 believe correctly is the date, of May, it  
 9 would have been a part of -  
 10 CHAYTOR, Q.C.:  
 11 Q. 2007?  
 12 MR. WISEMAN:  
 13 A. 2007.  
 14 CHAYTOR, Q.C.:  
 15 Q. Okay. So up to May 15th, 2007 you'd had no  
 16 discussions with Mr. Osborne on the issue?  
 17 MR. WISEMAN:  
 18 A. No, I hadn't.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay. And no discussions with your officials,  
 21 either, on it. And you would have reviewed  
 22 whatever was in your briefing book a couple of  
 23 months into your tenor as Minister?  
 24 MR. WISEMAN:  
 25 A. Yes.

Page 141

1 CHAYTOR, Q.C.:

2 Q. Yes. And not necessarily given it much focus

3 because it wasn't an issue that was brought to

4 your attention?

5 MR. WISEMAN:

6 A. Well, the issue hadn't--there were many other

7 issues that I--that needed more immediate

8 attention because decisions needed to be made

9 or actions needed to be taken and this wasn't

10 an issue that had been, I had been alerted to

11 that required some immediate attention or

12 action on behalf of the Department or myself

13 as the Minister.

14 CHAYTOR, Q.C.:

15 Q. Okay. And again, I'm just curious as to why

16 you would think the issue was done, resolved

17 and had been by your predecessors?

18 MR. WISEMAN:

19 A. Not done and resolved. What I'm suggesting is

20 that any action required by the Department

21 would have been dealt with by the--you know,

22 obviously the, you know, the conclusion of

23 what may come out of the faulty testing

24 process, I wasn't assuming that that had all

25 been concluded. What I'm suggesting to you is

Page 142

1 that during that period of time there was

2 some, you know, obviously my attention to be

3 turned to issues that required either a

4 decision or my guidance or my commentary or my

5 input or some decision on the part of the

6 Minister of the Department was required. And

7 as I understood it, you know, or assumed, that

8 wasn't necessary on the file at that moment

9 while other things needed that attention,

10 that's why my attention went there.

11 CHAYTOR, Q.C.:

12 Q. And would your briefing book have contained

13 prior briefing notes on the issue or would it

14 just be that -

15 MR. WISEMAN:

16 A. The normal process would be that, you know, a

17 briefing note is provided today, it updates

18 one that had been there earlier. So any

19 previous notes would have been taken out of a

20 briefing book.

21 CHAYTOR, Q.C.:

22 Q. Okay. And I believe the first briefing note

23 that we have for 2007 would be March 9th,

24 2007. So that would be the first briefing

25 note, according to what we've been provided,

Page 143

1 that would have been given to you or put in

2 your briefing book. And that would replace

3 whatever briefing note came before that?

4 MR. WISEMAN:

5 A. It would have replaced. That would have been

6 the normal practice, to have replaced the one

7 that was in the book prior to that.

8 CHAYTOR, Q.C.:

9 Q. Okay. So when you first sat down to look

10 through or scan through the briefing book, do

11 you know what was the date of the first

12 briefing note?

13 MR. WISEMAN:

14 A. I have no idea.

15 CHAYTOR, Q.C.:

16 Q. And why would the March 9th briefing note have

17 been created?

18 MR. WISEMAN:

19 A. There must have been some updated information

20 relative to the previous one.

21 CHAYTOR, Q.C.:

22 Q. Okay. And -

23 MR. WISEMAN:

24 A. That would be the normal thing.

25 CHAYTOR, Q.C.:

Page 144

1 Q. And would that be then brought to your

2 attention?

3 MR. WISEMAN:

4 A. No. What would have been the practice then

5 briefing notes would have been written by

6 officials in the Department and as you have

7 seen already, the briefing note would show an

8 area where someone prepared it, someone

9 approved it and it would have been dated and

10 it would have been, you know, filed in a

11 briefing book as an update. And without

12 having--that note wouldn't necessarily have

13 come to the Minister's attention or have been

14 brought to others' attention that the briefing

15 book was being updated. It would have been

16 updated as a matter, it was a the process.

17 That has subsequently changed. Briefing notes

18 now require a signing off by both the Deputy

19 and a Minister and so there is a mechanism now

20 where updates to a briefing book would be

21 brought to the attention of the Minister.

22 CHAYTOR, Q.C.:

23 Q. Yes, and we'll get to that. But if the

24 briefing note was updated because there was

25 new information, that wasn't brought to your

Page 145

1 attention?  
 2 MR. WISEMAN:  
 3 A. No.  
 4 CHAYTOR, Q.C.:  
 5 Q. Okay. The information from Eastern Health in  
 6 the technical media briefing that Eastern  
 7 Health did on December 11th, 2006, was any of  
 8 that material brought to your attention up to  
 9 this point in time?  
 10 MR. WISEMAN:  
 11 A. No.  
 12 CHAYTOR, Q.C.:  
 13 Q. And I take it that material was not in your  
 14 briefing book?  
 15 MR. WISEMAN:  
 16 A. I wouldn't way to say that because I don't  
 17 know. I mean, the briefing book when I became  
 18 Minister in January, what was in my briefing  
 19 book at that time, I can't recall the date  
 20 that would have been on it, nor do I recall  
 21 the content of what was in the briefing note  
 22 itself.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. And the issue certainly hadn't come up  
 25 in Cabinet up to this point in time?

Page 146

1 MR. WISEMAN:  
 2 A. It hadn't, no.  
 3 CHAYTOR, Q.C.:  
 4 Q. The issue was in the media, obviously, on  
 5 December 11th, 2006 and in the days following  
 6 that. Did you hear that at that point in  
 7 time, did you see any of the news coverage on  
 8 that?  
 9 MR. WISEMAN:  
 10 A. I would have, yes, yes, but I don't recall the  
 11 content of that. I mean, as a listener of the  
 12 news and a reader of the paper I would have  
 13 been, you know, aware of the item in the news,  
 14 but recalling what that coverage would have  
 15 contained, I don't recall.  
 16 CHAYTOR, Q.C.:  
 17 Q. And again, any discussions around the  
 18 Department? Because you're there, you're  
 19 Parliamentary Secretary to the Department in  
 20 that time period. Any discussions around the  
 21 Department following the December 11th, 2006  
 22 news briefing?  
 23 MR. WISEMAN:  
 24 A. Not that I was a part of, no.  
 25 CHAYTOR, Q.C.:

Page 147

1 Q. Or that -  
 2 MR. WISEMAN:  
 3 A. Recognize that in terms of the--you make  
 4 reference to my being around the Department.  
 5 As Parliamentary Secretary, unlike being a  
 6 Minister, the Minister is a full-time job as a  
 7 Minister and you're around the Department most  
 8 of the time and you have support staff to help  
 9 you with your role as a Minister and others do  
 10 some of your work as a--because as an elected  
 11 official from a particular district there's  
 12 some involvement you have with your district.  
 13 As a Parliamentary Secretary you're not a  
 14 full-time person in the Department. You know,  
 15 there's a role that you play in the support of  
 16 the Minister, but you still have a significant  
 17 involvement with your constituency. And so as  
 18 a Parliamentary Secretary I wouldn't have been  
 19 in the Department on an ongoing basis in the  
 20 same fashion as I am as a Minister. And so  
 21 many times you may be out of the Department  
 22 for what might be a week or so that you may  
 23 not be in the Department at all.  
 24 CHAYTOR, Q.C.:  
 25 Q. Okay. Well, and do you recall then were you

Page 148

1 in the Department -  
 2 MR. WISEMAN:  
 3 A. I don't recall.  
 4 CHAYTOR, Q.C.:  
 5 Q. - then? Okay. And any discussions that may  
 6 or may not have occurred in the Department you  
 7 wouldn't not be aware of that?  
 8 MR. WISEMAN:  
 9 A. Not necessarily, no.  
 10 CHAYTOR, Q.C.:  
 11 Q. Well, were you?  
 12 MR. WISEMAN:  
 13 A. No. I mean, there may have been--I wasn't--I'm  
 14 just trying to make a distinction here about  
 15 whether or not there was discussions in the  
 16 Department.  
 17 CHAYTOR, Q.C.:  
 18 Q. Yes.  
 19 MR. WISEMAN:  
 20 A. Because I'm not aware that there was.  
 21 CHAYTOR, Q.C.:  
 22 Q. Right. That's my question to you.  
 23 MR. WISEMAN:  
 24 A. But in terms of my own personal involvement  
 25 with the discussion, I wasn't personally

Page 149

1 involved in a discussion around that issue in  
 2 December of '06.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay. And the only knowledge you would have  
 5 had on the issue arising from that media  
 6 technical briefing would be what you heard as  
 7 a citizen, what you heard in the media?  
 8 MR. WISEMAN:  
 9 A. Yeah.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay. So on May 15th there's a story that  
 12 breaks in the media and that brings your  
 13 attention to the issue. And you say that you  
 14 gathered your officials together. So who is  
 15 it, who did you go to, who did you consult  
 16 with?  
 17 MR. WISEMAN:  
 18 A. I would have had the Deputy and the Assistant  
 19 Deputy responsible for Board Services,  
 20 Communications Director would have been there.  
 21 CHAYTOR, Q.C.:  
 22 Q. Okay. So that's John Abbott, Moira Hennessey,  
 23 Tansy Mundon?  
 24 MR. WISEMAN:  
 25 A. And that day, as well, I had George Tilley,

Page 150

1 who is the former CEO of Eastern Health would  
 2 have been in that day, as well, and because I  
 3 needed--this was some time, you know, mid day.  
 4 The House of Assembly is opening at 1:30 and  
 5 this would have been, you know, sometime, you  
 6 know, an hour or two or three before that,  
 7 sometime around the midday, if I'm not  
 8 mistaken. And we would have gathered and to  
 9 give me an update and brief me exactly on what  
 10 the issues were, what had been--you know, the  
 11 media report about the information disclosed  
 12 and not being disclosed. And so that was my  
 13 first detailed, you know, briefing that I  
 14 would have had. You know, whatever briefing  
 15 note would have been the most current one at  
 16 that time, as I, you know, look at the date of  
 17 those, that would have been the March or the  
 18 April briefing note would have probably been  
 19 the most -  
 20 CHAYTOR, Q.C.:  
 21 Q. April 19th, yes.  
 22 MR. WISEMAN:  
 23 A. - recent one. Because that would have been  
 24 used as a point of reference for discussion.  
 25 And anything else I would have gleaned would

Page 151

1 have been gleaned from the conversation.  
 2 CHAYTOR, Q.C.:  
 3 Q. Okay. So let me just get it correct. You  
 4 gather your officials around you and you have  
 5 Mr. Abbott, Ms. Hennessey and Ms. Mundon and  
 6 you refer to the most briefing note, which at  
 7 that point in time is April 19th, 2007. So  
 8 again, I take it the briefing note would have  
 9 been updated from March 9th, 2007 to April  
 10 19th, 2007. And if there were new information  
 11 coming forward on April 19th, 2007, that too  
 12 had not been brought to your attention?  
 13 MR. WISEMAN:  
 14 A. No, it had not been.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay. So the fact that the briefing notes  
 17 were being updated had not been brought to  
 18 your attention?  
 19 MR. WISEMAN:  
 20 A. No. And the normal practice at that time was,  
 21 you know, that briefing notes were not brought  
 22 to the attention of Ministers at that time.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. And had it been brought to your  
 25 attention perhaps would you have had the sense

Page 152

1 that this issue is something that's still  
 2 ongoing and something perhaps that you should  
 3 be turning your mind to?  
 4 MR. WISEMAN:  
 5 A. Depending on the nature of the update, I  
 6 suppose, in terms of if the update was a minor  
 7 edit or a minor new piece of information that,  
 8 you know, hadn't changed very much, I may or  
 9 may not have. By virtue of having something  
 10 new added to the note that in and of itself I  
 11 wouldn't want to suggestion would have, you  
 12 know, prompted me to turn my head to it. But  
 13 obviously had it been, it would have prompted  
 14 me to have a discussion in around it because  
 15 something was changing with it.  
 16 CHAYTOR, Q.C.:  
 17 Q. Yes.  
 18 MR. WISEMAN:  
 19 A. The extent to which I would have engaged, I  
 20 would have obviously been influenced by, you  
 21 know, the nature of any changes that would  
 22 have been occurring -  
 23 CHAYTOR, Q.C.:  
 24 Q. The nature of the information that was  
 25 forthcoming?

Page 153

1 MR. WISEMAN:  
 2 A. Exactly, yeah.  
 3 CHAYTOR, Q.C.:  
 4 Q. Right. Okay, so the first thing after hearing  
 5 this story--and did you hear this story  
 6 yourself or was this a story that was brought  
 7 to your attention?  
 8 MR. WISEMAN:  
 9 A. Brought to my attention.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay. And who brought it to your attention?  
 12 MR. WISEMAN:  
 13 A. I believe it was Director of Communication,  
 14 Tansy Mundon.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay.  
 17 MR. WISEMAN:  
 18 A. But I -  
 19 CHAYTOR, Q.C.:  
 20 Q. And what were you told?  
 21 MR. WISEMAN:  
 22 A. That there's a story in the media this morning  
 23 and that we--I don't recall the conversation  
 24 exactly but I--because normally what would  
 25 have happened is that, you know, the Director

Page 154

1 of Communication would indicate to me that,  
 2 which would be the current day practice, as  
 3 well, you know, there's some media stories  
 4 today that deal with some health issues and  
 5 here's the nature of them and that we need to--  
 6 you know, we should get together and have a  
 7 conversation around them. And so that would  
 8 have been, I suspect, the nature of the  
 9 conversation that we would have had. And  
 10 then, you know, I would have then asked that  
 11 we get together and have that kind of  
 12 conversation around it.  
 13 CHAYTOR, Q.C.:  
 14 Q. Okay. And had Ms. Mundon indicated to you  
 15 whether or not she had any warning that that  
 16 news story was going to break on May 15th?  
 17 MR. WISEMAN:  
 18 A. I can't recall.  
 19 CHAYTOR, Q.C.:  
 20 Q. And did you have any knowledge, were you  
 21 alerted to the issue, that the issue was going  
 22 to become a public issue on May 15th?  
 23 MR. WISEMAN:  
 24 A. I don't recall. That would have been the  
 25 first time it came to my attention, so I

Page 155

1 don't--I wouldn't way to say definitively but  
 2 I don't recall it.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay.  
 5 MR. WISEMAN:  
 6 A. I doubt it, but I don't recall it.  
 7 CHAYTOR, Q.C.:  
 8 Q. So your Director of Communications brought the  
 9 issue of the news story to your attention on  
 10 May 15th?  
 11 MR. WISEMAN:  
 12 A. Um-hm.  
 13 CHAYTOR, Q.C.:  
 14 Q. And then is your immediate response to go look  
 15 for the briefing note or did you question her  
 16 on it, did you say, "Well, you know, Tansy,  
 17 where is this issue, what's been happening on  
 18 the issue?"  
 19 MR. WISEMAN:  
 20 A. I mean, I might have had a brief discussion at  
 21 the moment, but it was, you know, I suspect we  
 22 had a--Tuesday mornings there's a committee of  
 23 Cabinet that I sit on that meets every Tuesday  
 24 morning, and as I recall it, I had to attend  
 25 that meeting. And then when I would have come

Page 156

1 back, then we would have--I would have asked  
 2 to have people together so we could have the  
 3 discussion around it. I may have had a brief  
 4 discussion in around the issue before I left  
 5 for the meeting and then enough to be able to  
 6 say that, well, we need to pull some people  
 7 together to have a fuller discussion around  
 8 this issue. And that's what would have  
 9 happened over the course of, during my short  
 10 absence. And then I would have come back and  
 11 we would have sat down and had the discussion.  
 12 CHAYTOR, Q.C.:  
 13 Q. So the first person, though, that you speak to  
 14 about it is Tansy Mundon. And I'm wondering,  
 15 did you ask her, "Tansy, what's the background  
 16 here in terms of the media briefing back in  
 17 December, 2006?" because, of course, she would  
 18 have had the continuity as the Director of  
 19 Communication back then. Do you recall did  
 20 you ask her, "Well, is that what happened, did  
 21 all the numbers come out? What happened?"  
 22 MR. WISEMAN:  
 23 A. I may not have got into a lengthy discussion  
 24 with her at that initial moment, but clearly  
 25 that kind of level of detail would have come

Page 157

1 out in our discussion when I got together with  
 2 the larger group.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay. And the larger group then were John  
 5 Abbott, Moira Hennessey, Tansy?  
 6 MR. WISEMAN:  
 7 A. Um-hm.  
 8 CHAYTOR, Q.C.:  
 9 Q. Is that it? Did you involve George Tilley  
 10 right away or did you speak to your internal  
 11 people first?  
 12 MR. WISEMAN:  
 13 A. I would have had--I mean, George Tilley came.  
 14 I think I asked to have George available for  
 15 the meeting when we got together. Now,  
 16 whether we--I can't recall whether we had a  
 17 brief chat before George's arrival, but I  
 18 would have thought that George would have been  
 19 there for the whole discussion.  
 20 CHAYTOR, Q.C.:  
 21 Q. Okay. So after speaking to Tansy, did you  
 22 then go and look for a briefing note in your  
 23 book or did you ask anyone to bring you the  
 24 latest, what happened?  
 25 MR. WISEMAN:

Page 158

1 A. I mean, the sequence of the daily events, I  
 2 mean, I don't know if I looked at the note  
 3 before I went to my other meeting or whether I  
 4 just engaged in a discussion to get some  
 5 preliminary knowledge and insight and then  
 6 later, you know, came back and delved into a  
 7 little more detail later. But in the course  
 8 of that morning, clearly, you know, I would  
 9 have, you know, used that briefing note, the  
 10 most recent one, as my point of reference to  
 11 guide a discussion and then talked about--  
 12 because recognizing that the briefing note  
 13 that was there would have been an updated  
 14 briefing note, so it wouldn't necessarily have  
 15 included and it would--not necessarily,  
 16 wouldn't have included what was shared in a  
 17 briefing that occurred back in November.  
 18 CHAYTOR, Q.C.:  
 19 Q. Right.  
 20 MR. WISEMAN:  
 21 A. And so the discussion that I had had with,  
 22 that included Mr. Tilley, you know, would have  
 23 been that broader discussion of all of the  
 24 issues in and around what was reported, what  
 25 was released, what wasn't released, and what

Page 159

1 was shared in the briefing, what wasn't shared  
 2 in the briefing and the--and an update on what  
 3 the current status was.  
 4 CHAYTOR, Q.C.:  
 5 Q. Right. And someone had to make contact with  
 6 Mr. Tilley, so likely who would have done  
 7 that?  
 8 MR. WISEMAN:  
 9 A. Very likely that would have been the Deputy.  
 10 CHAYTOR, Q.C.:  
 11 Q. Okay. So likely you spoke to the Deputy prior  
 12 to the larger group getting together?  
 13 MR. WISEMAN:  
 14 A. Yes.  
 15 CHAYTOR, Q.C.:  
 16 Q. And do you recall any discussion with the  
 17 Deputy or asking the Deputy, "Mr. Abbott,  
 18 where is this issue, what's the status?"  
 19 MR. WISEMAN:  
 20 A. Yeah, I mean, I would have had that kind of  
 21 general discussion, yes, obviously, you know,  
 22 to, when it came to my attention, had a brief  
 23 discussion and then, you know, obviously the--  
 24 just to, I needed to advance the discussion  
 25 far enough, obviously, that there was a number

Page 160

1 of questions that I had here that would have  
 2 prompted me to suggest that Mr. Tilley should  
 3 be a part of the discussion, I'd like to bring  
 4 him in to be a part of that discussion.  
 5 CHAYTOR, Q.C.:  
 6 Q. So what did Mr. -  
 7 MR. WISEMAN:  
 8 A. And so -  
 9 CHAYTOR, Q.C.:  
 10 Q. - Abbott tell you?  
 11 MR. WISEMAN:  
 12 A. I mean, I guess he--I mean, I don't remember  
 13 the exact nature of the conversation. He was  
 14 probably giving me a very brief synopsis of  
 15 what his understanding of the issue was at  
 16 that moment in terms of current status and  
 17 where it was, and so that would have been a  
 18 kind of a snapshot. And again, it would have  
 19 been followed by a more detailed discussion  
 20 when we sat down later that morning.  
 21 CHAYTOR, Q.C.:  
 22 Q. On the issue that was brought to your  
 23 attention or the news story, as you indicate,  
 24 was whether or not all the numbers had been  
 25 released in December, 2006?



Page 161

1 MR. WISEMAN:  
 2 A. Yeah.  
 3 CHAYTOR, Q.C.:  
 4 Q. So do you recall specifically asking Mr.  
 5 Abbott about that and his memory of what had  
 6 happened?  
 7 MR. WISEMAN:  
 8 A. I did. I mean, the issue of--I mean, I became  
 9 aware that there was, there was credence to  
 10 the news coverage, that information was not  
 11 shared that was available to Eastern Health.  
 12 I mean, I was--I became aware of that  
 13 particular piece and I -  
 14 CHAYTOR, Q.C.:  
 15 Q. And was that during your conversation with Mr.  
 16 Abbott before the larger group was there?  
 17 MR. WISEMAN:  
 18 A. Yes.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay.  
 21 MR. WISEMAN:  
 22 A. And that would have been--you know, I mean,  
 23 it's not every time as a Minister you  
 24 wouldn't, regardless of what authority it  
 25 involves, as a normal course, you know, it

Page 162

1 would have been an unusual event for me to  
 2 suggest to the Deputy that, you know, I want  
 3 to have a CEO in for a discussion.  
 4 CHAYTOR, Q.C.:  
 5 Q. Yes, I would think.  
 6 MR. WISEMAN:  
 7 A. That doesn't happen in every briefing. And so  
 8 that, you know, my desire to have the CEO  
 9 present for the meeting obviously came about  
 10 as my, you know, gaining an understanding from  
 11 that discussion that, you know, there was, in  
 12 fact, some information that had been, you  
 13 know, not disclosed in a briefing in, earlier  
 14 in December and that now, you know, it was in  
 15 a public document, obviously it was a court  
 16 record, it's a public document. And so I was--  
 17 I don't know the exact nature of my response  
 18 and my commentary at the time, but I was--the  
 19 fact that I invited the CEO in, I was  
 20 obviously taken back by the notion that  
 21 information was not shared and, you know, I  
 22 had a curiosity, if I could use that phrase,  
 23 as to why something would not have been shared  
 24 in a public briefing in December if you knew  
 25 that you were going to be including it in a

Page 163

1 court document that was going to follow, and  
 2 several months later it was going to become  
 3 public knowledge, anyway.  
 4 CHAYTOR, Q.C.:  
 5 Q. Oh, two months.  
 6 MR. WISEMAN:  
 7 A. So why would you do it.  
 8 CHAYTOR, Q.C.:  
 9 Q. Two months later.  
 10 MR. WISEMAN:  
 11 A. Yeah. So why wouldn't you do it in December  
 12 if you're going to do it in February. And so  
 13 it was, my reaction was enough to prompt my  
 14 desire to have the CEO present.  
 15 CHAYTOR, Q.C.:  
 16 Q. Yes, okay. So Mr. Abbott indicated to you,  
 17 based on your discussions with him, that he  
 18 was aware that all the numbers hadn't come out  
 19 in December, 2006?  
 20 MR. WISEMAN:  
 21 A. That would have been confirmed. I can't  
 22 recall the exact exchange that would have  
 23 occurred between either myself and Ms. Mundon  
 24 earlier in the morning when she alerted me to  
 25 the news item, nor can I recall the, you know,

Page 164

1 the exchange that occurred between myself and  
 2 Mr. Abbott. But clearly, you know, the notion  
 3 that I invited, you know, wanted to have Mr.  
 4 Tilley present would have, give you a strong  
 5 indication that I, you know, obviously, you  
 6 know, this wasn't something that I thought to  
 7 be appropriate or that I thought that, you  
 8 know, was, you know, I just needed a brief  
 9 discussion with, you know, with officials in  
 10 the Department. Obviously if there's been  
 11 information now in the public domain today  
 12 that was withheld from public disclosure  
 13 earlier, you know, that gave me some reason  
 14 for concern.  
 15 CHAYTOR, Q.C.:  
 16 Q. And did you ask Mr. Abbott when did he become  
 17 aware that all the numbers had not been  
 18 disclosed in December, 2006?  
 19 MR. WISEMAN:  
 20 A. I can't recall asking him, you know, at that  
 21 particular moment whether or not he was aware  
 22 that they weren't, you know, that was he aware  
 23 earlier than that day that it hadn't been  
 24 disclosed. But, you know, as the conversation  
 25 unfolded that day, and I wouldn't say

Page 165

1 necessarily that day, or the following day,  
 2 the 15th or the 16th, that during my  
 3 discussions--because appreciate that this was  
 4 the first time hearing it, had a discussion  
 5 around on the morning of the 15th, the House  
 6 of Assembly sat on the 15th, so when the House  
 7 closed that afternoon, it became a topic of  
 8 conversation again and it consumed my morning  
 9 the following day. And you know, clearly, you  
 10 know, there was--I don't remember asking when  
 11 did you first become aware that it wasn't  
 12 disclosed -  
 13 CHAYTOR, Q.C.:  
 14 Q. But it was apparent to you -  
 15 MR. WISEMAN:  
 16 A. But it was apparent to me that -  
 17 CHAYTOR, Q.C.:  
 18 Q. That he was aware?  
 19 MR. WISEMAN:  
 20 A. The officials in the Department were aware  
 21 that, yes, the information that was disclosed  
 22 in the public domain in December was different  
 23 than the information that was shared in a  
 24 briefing in the Department earlier in  
 25 November.

Page 166

1 CHAYTOR, Q.C.:  
 2 Q. And whether they had that realization in  
 3 January, 2007, February, March, April, 2007,  
 4 you didn't ask?  
 5 MR. WISEMAN:  
 6 A. I had an impression. I don't recall asking  
 7 the question, "When did you first know this?"  
 8 My understanding was and the sense that I had  
 9 was they were very much aware of that  
 10 information much earlier than this discussion  
 11 in May.  
 12 CHAYTOR, Q.C.:  
 13 Q. They were aware. So this wasn't something new  
 14 to John Abbott on May 15th, 2007?  
 15 MR. WISEMAN:  
 16 A. That's the distinct impression I had.  
 17 CHAYTOR, Q.C.:  
 18 Q. Okay. Nor Tansy Mundon, or do you recall?  
 19 MR. WISEMAN:  
 20 A. I don't recall that, the conversation, but my  
 21 sense was that, you know, there was a  
 22 knowledge that this was not new information  
 23 that they were getting for the first time now  
 24 in May.  
 25 CHAYTOR, Q.C.:

Page 167

1 Q. And did you ask whether or not your  
 2 predecessor, Mr. Osborne, had been aware of  
 3 that?  
 4 MR. WISEMAN:  
 5 A. I didn't ask the question, no.  
 6 CHAYTOR, Q.C.:  
 7 Q. To this day do you know that?  
 8 MR. WISEMAN:  
 9 A. No, I don't.  
 10 CHAYTOR, Q.C.:  
 11 Q. You haven't asked anyone that?  
 12 MR. WISEMAN:  
 13 A. I haven't asked, no.  
 14 CHAYTOR, Q.C.:  
 15 Q. Okay, and so then you gather together the  
 16 bigger group. Tansy Mundon brought it to your  
 17 attention, you've now then spoken with John  
 18 Abbott. And I take it he's arranged to bring  
 19 Mr. Tilley in to the Department?  
 20 MR. WISEMAN:  
 21 A. Um-hm.  
 22 CHAYTOR, Q.C.:  
 23 Q. Your meeting took place in the Department that  
 24 day?  
 25 MR. WISEMAN:

Page 168

1 A. It did, yes.  
 2 CHAYTOR, Q.C.:  
 3 Q. Okay. And tell us who was present in the  
 4 room?  
 5 MR. WISEMAN:  
 6 A. The same group that we just identified. The  
 7 normal--and I don't recall anyone being  
 8 different than this group, but throughout -  
 9 CHAYTOR, Q.C.:  
 10 Q. So did Mr. Tilley come alone or was there  
 11 anyone else from Eastern Health with him?  
 12 MR. WISEMAN:  
 13 A. I can't recall if there was. I remember  
 14 having a meeting at one point with Mr. Tilley  
 15 that included his Communication Director, but  
 16 I don't--I'm not certain if that was that  
 17 meeting or not, I don't -  
 18 CHAYTOR, Q.C.:  
 19 Q. Susan Bonnell, you mean?  
 20 MR. WISEMAN:  
 21 A. Yes.  
 22 CHAYTOR, Q.C.:  
 23 Q. And you're not sure if she was there?  
 24 MR. WISEMAN:  
 25 A. I'm not certain if she was there for that

Page 169

1 meeting or not. But I--or normally in the  
 2 Department it would have been the Deputy and  
 3 Moira Hennessey, Assistant Deputy, and the  
 4 Director of Communications. These were the  
 5 three people that, you know, in my discussions  
 6 in around this issue I would have assembled to  
 7 have that discussion.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay. And your -  
 10 MR. WISEMAN:  
 11 A. And so I suspect that day wouldn't have been  
 12 any different.  
 13 CHAYTOR, Q.C.:  
 14 Q. Okay. And your discussion centred around the  
 15 latest briefing note in your binder would have  
 16 been April 19th, 2007. Maybe we could have a  
 17 look at that, Registrar? That's P-0126, page  
 18 8, please? And this briefing note at this  
 19 point in time would almost -  
 20 MR. WISEMAN:  
 21 A. Do you mind if I use the hard copy that I have  
 22 here?  
 23 CHAYTOR, Q.C.:  
 24 Q. Oh, absolutely. Whatever you're more  
 25 comfortable with. This would have been almost

Page 170

1 a month old at the point in time you're having  
 2 your meeting?  
 3 MR. WISEMAN:  
 4 A. Yes.  
 5 CHAYTOR, Q.C.:  
 6 Q. So I just want to take you through what you  
 7 would have been provided with in terms of  
 8 information from the paper and then also any  
 9 additional information you've received from  
 10 your in-person briefing.  
 11 THE COMMISSIONER:  
 12 Q. Refresh my memory, what was the date of this  
 13 one again?  
 14 CHAYTOR, Q.C.:  
 15 Q. The date of this one, if we can just scroll  
 16 down, is April 19th, April 19th, 2007.  
 17 THE COMMISSIONER:  
 18 Q. Thank you.  
 19 CHAYTOR, Q.C.:  
 20 Q. And, Mr. Wiseman, it's drafted by Beverley  
 21 Griffiths. Who is Beverley Griffiths?  
 22 MR. WISEMAN:  
 23 A. She's an official who works in Moira  
 24 Hennessey's department.  
 25 CHAYTOR, Q.C.:

Page 171

1 Q. And it's approved by Moira?  
 2 MR. WISEMAN:  
 3 A. Yes.  
 4 CHAYTOR, Q.C.:  
 5 Q. And we've already heard that she is the ADM  
 6 for Board Services, okay. And the briefing  
 7 note begins--and chances are, from what you've  
 8 told us, that you would not have seen the  
 9 March 9th, 2007 briefing note? When you get  
 10 your book this day, this is the latest one?  
 11 MR. WISEMAN:  
 12 A. This would have been the latest one, yes.  
 13 CHAYTOR, Q.C.:  
 14 Q. And so this would have replaced the March 9th,  
 15 2007?  
 16 MR. WISEMAN:  
 17 A. Exactly.  
 18 CHAYTOR, Q.C.:  
 19 Q. Okay. So the title, of course, "ER/PR Testing  
 20 at Eastern Health." And the issue identified  
 21 is, "Eastern Health released the outcome of  
 22 its review of the ER/PR testing in December.  
 23 A mistaken testing may have lead to incorrect  
 24 treatment for 117 women in this province  
 25 suffering from breast cancer. Legal

Page 172

1 proceedings have begun." And I guess that  
 2 should be 117 people. And there's a list of  
 3 anticipated questions. And one of the  
 4 questions is, "When will breast cancer screen  
 5 tests resume at the laboratory in St. John's?"  
 6 And breast cancer screening tests, obviously,  
 7 it's a breast cancer screen test, it's the  
 8 ER/PR testing, but that is what's here in the  
 9 note on April 19th. If we just scroll down  
 10 under "Key Messages", and it indicates that,  
 11 the third bullet, "Eastern Health's priority  
 12 was its patients. Clinical team members  
 13 communicated individually with all patients  
 14 impacted by this review. The organization has  
 15 acted in what is determined to be the best  
 16 interest of the patients." So, Mr. Wiseman,  
 17 in reading this briefing note on May 15th, is  
 18 that what you understood, that clinical team  
 19 members had communicated individually with all  
 20 patients impacted by this review?  
 21 MR. WISEMAN:  
 22 A. Exactly, yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. Okay. And I take it you weren't told anything  
 25 in your oral briefings to say otherwise?

Page 173

1 MR. WISEMAN:  
 2 A. No.  
 3 CHAYTOR, Q.C.:  
 4 Q. And then the next bullet, "Eastern Health  
 5 resumed ER/PR testing in St. John's on  
 6 February 1st, 2007. We are confident that  
 7 Eastern Health has implemented the appropriate  
 8 new measures to ensure the highest standard of  
 9 care for breast cancer patients."  
 10 MR. WISEMAN:  
 11 A. Um-hm.  
 12 CHAYTOR, Q.C.:  
 13 Q. So, Mr. Wiseman, is this the first time you  
 14 would have learned that Eastern Health had  
 15 resumed ER/PR testing in February of 2007?  
 16 MR. WISEMAN:  
 17 A. It was, yes.  
 18 CHAYTOR, Q.C.:  
 19 Q. So you nor nobody in your Department or if  
 20 they were, they didn't bring it to your  
 21 attention, was informed that the testing was  
 22 going to resume on February 1st, 2007?  
 23 MR. WISEMAN:  
 24 A. I can only speak to my knowledge and I was not  
 25 informed that they were resuming in February,

Page 174

1 no.  
 2 CHAYTOR, Q.C.:  
 3 Q. And do you know or have you made any inquiries  
 4 to determine whether or not anyone else in  
 5 your Department had been informed?  
 6 MR. WISEMAN:  
 7 A. No, I haven't.  
 8 CHAYTOR, Q.C.:  
 9 Q. Okay. So whether or not there was any--  
 10 whether or not the Department was even  
 11 notified of the fact that the testing was  
 12 going to be resumed, you don't know?  
 13 MR. WISEMAN:  
 14 A. I'm not certain, no.  
 15 CHAYTOR, Q.C.:  
 16 Q. And whether or not, then, the Department was  
 17 involved in any way in insuring itself that  
 18 the appropriate measures had been taken to  
 19 allow the testing to resume, you don't know?  
 20 MR. WISEMAN:  
 21 A. I don't know.  
 22 CHAYTOR, Q.C.:  
 23 Q. Okay.  
 24 THE COMMISSIONER:  
 25 Q. Can we find out from the witness, please, who

Page 175

1 we believe the clinical team members are? A  
 2 lot of terms throwing around in briefing notes  
 3 and people seem to have different views of  
 4 what they are.  
 5 CHAYTOR, Q.C.:  
 6 Q. Yeah, clinical team members, what did you take  
 7 from that, who would you understand the  
 8 clinical team members to be?  
 9 MR. WISEMAN:  
 10 A. These would be clinicians who--my assumption  
 11 would have been, when I read that, it would  
 12 have been--I didn't ask the question directly,  
 13 but my assumption would have been that these  
 14 were clinicians and they might have been  
 15 physicians or other clinicians who might have  
 16 been involved in the testing procedure or the  
 17 treatment, more particularly the treatment of  
 18 the patients. I didn't think they would have  
 19 been lab technologists involved in that. It  
 20 would have been someone who would have been  
 21 involved in treatment.  
 22 CHAYTOR, Q.C.:  
 23 Q. So clinicians to you would mean the physicians  
 24 or others involved in the treatment of the  
 25 patients?

Page 176

1 MR. WISEMAN:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay.  
 5 MR. WISEMAN:  
 6 A. In this particular contents here--context  
 7 here, you know, the clinical team would have  
 8 been those involved in the treatment of the -  
 9 CHAYTOR, Q.C.:  
 10 Q. People directly involved in the treatment of  
 11 the patients?  
 12 MR. WISEMAN:  
 13 A. Patient treatment, not necessarily the  
 14 treatment of these particular patients here,  
 15 but, you know, clinical team meaning for me  
 16 would have meant, you know, group of  
 17 clinically trained people who would have been  
 18 involved in patient care, you know, to use  
 19 that generic term, "involved in patient care"  
 20 not in the patient care of these particular  
 21 patients.  
 22 CHAYTOR, Q.C.:  
 23 Q. People who, though, are currently involved in  
 24 patient care, whether or not it's the  
 25 particular patient who's being spoken to or

Page 177

1 not?

2 MR. WISEMAN:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. All right, okay. Would it include a patient

6 relations officer?

7 MR. WISEMAN:

8 A. Quite possibly. I suppose I hadn't thought

9 necessarily, but I wouldn't exclude it, no.

10 CHAYTOR, Q.C.:

11 Q. And when you read this, was that what you were

12 thinking?

13 MR. WISEMAN:

14 A. I didn't think about the terminology patient

15 relations officer, no, it hadn't come to my

16 mind, no.

17 CHAYTOR, Q.C.:

18 Q. To you clinical team members, you were

19 thinking meant -

20 MR. WISEMAN:

21 A. Clinicians -

22 CHAYTOR, Q.C.:

23 Q. - physicians or people involved in patient

24 care, activity involved in patient care?

25 MR. WISEMAN:

Page 178

1 A. Clinically trained people who were involved in

2 patient care.

3 CHAYTOR, Q.C.:

4 Q. Okay. Now, if we continue on then in your

5 briefing note then. This is--and I take it

6 you would have put some reliance on the

7 information contained in this briefing note

8 together with whatever else is told to you

9 later in your verbal?

10 MR. WISEMAN:

11 A. Yes.

12 CHAYTOR, Q.C.:

13 Q. In your verbal briefing, okay. You indicated

14 or it's indicated in that same bullet that I

15 just brought you to, "We are confident that

16 Eastern Health has implemented the appropriate

17 measures to ensure the highest standard of

18 care for breast cancer patients." Did you ask

19 what are those appropriate new measures?

20 MR. WISEMAN:

21 A. I did.

22 CHAYTOR, Q.C.:

23 Q. And what were you told?

24 MR. WISEMAN:

25 A. I was told, well, actually, it's similar to

Page 179

1 what's in the note, in terms of the quality

2 assurance initiatives; having a dedicated

3 laboratory put in place, you know, to deal

4 with it; having dedicated staff put in place

5 to deal with it; you know, they have, you

6 know, put together a team of people now

7 dedicated to ER/PR; and that they've had, you

8 know, brought new resources to bear, both

9 human resources and some capital resources and

10 they now have a very different operation than

11 they had before; and that they have

12 implemented the recommendations of some

13 external consultants. So that that was the

14 kind of message that I was getting.

15 CHAYTOR, Q.C.:

16 Q. Okay. And I think that appears further on in

17 your briefing note. And the next bullet

18 indicates that "There were multiple factors

19 involved in the ER/PR testing and that there's

20 been no blame assigned within Eastern Health."

21 Multiple factors involved in the ER/PR

22 testing, did you inquire, "Well, what are

23 those factors?"

24 MR. WISEMAN:

25 A. One of the things that, you know, it became

Page 180

1 apparent as we talked about it this day, on

2 the 15th when I first had discussion and the

3 next day as we talked it through further that,

4 you know, this was a--I had references to, you

5 know, complex tests that were being done and

6 there was multiple steps to it, so there was,

7 you know, multiple, you know, opportunities or

8 many chances of errors occurring when you got

9 multiple steps to a process. And so there was

10 people making references to this being a

11 complex testing procedure. The other--which

12 is a very technical kind of an answer, I

13 suppose. Then if I look a some of the other

14 initiatives that were there, you know, the

15 quality assurance initiatives that had been

16 put in place, implying that they weren't in

17 place before. The fact that you add staff to,

18 you know, an area, dedicated staff implies

19 that they weren't there before. And I think

20 one of the things that became apparent very

21 quickly in this discussion and it started to

22 become even clearer as we talked about it more

23 as we got into the following day that there

24 was no--I wasn't getting a comfort level that

25 anybody really knew what went wrong. And

Page 181

1 there was multiple, you know, comments being  
 2 made, not necessarily offered up as  
 3 suggestions as to what did happen or attempts  
 4 to explain what happened, but more attempts to  
 5 explain the complexity versus trying to  
 6 explain what happened.  
 7 CHAYTOR, Q.C.:  
 8 Q. Okay. So I take it, then, the multiple  
 9 factors involved, nobody was able to  
 10 articulate to you, and in fact, you felt a  
 11 level of discomfort in what was being told to  
 12 you as to what really was at the core of this  
 13 issue, what had happened?  
 14 MR. WISEMAN:  
 15 A. Exactly.  
 16 CHAYTOR, Q.C.:  
 17 Q. But you were told issues of quality assurance?  
 18 MR. WISEMAN:  
 19 A. Yes. When the--I mean, my view started to get  
 20 formulated from this discussion this day here,  
 21 you know, in terms of, you know, what went  
 22 wrong, what could have potentially gone wrong  
 23 here. And if I just, if you don't mind in  
 24 answering this question if I could move  
 25 forward a little bit to create a picture for

Page 182

1 you. This was the first day having this  
 2 discussion on the 15th, this is on a Tuesday  
 3 or something. Now, again, on Wednesday having  
 4 engaged in this file in a very intense way,  
 5 having discussions with officials and the  
 6 officials are getting information from Eastern  
 7 Health and relaying it to me and there's this  
 8 dialogue taking place within the Department.  
 9 And you know, there's a--it becomes apparent  
 10 that there's a number of things about this  
 11 that, you know, is, you know, we need a lot of  
 12 answers to a lot of questions because we still  
 13 don't know what went wrong. And it's still  
 14 troublesome that, you know, information that  
 15 was available to Eastern Health wasn't shared  
 16 in the December briefing, that was still a  
 17 bothersome issue. And so, you know, I soon  
 18 started to get a sense here that, you know, we  
 19 needed to get a better understanding of what  
 20 was here. And the people that I was having a  
 21 discussion with weren't in a position to give  
 22 me the exact answers as to what went wrong  
 23 here, what, why did this happen -  
 24 MS. CHAYTOR:  
 25 Q. Including Mr. Tilley?

Page 183

1 MR. WISEMAN:  
 2 A. Including Mr. Tilley. I mean, there was  
 3 commentary about, you know, the technical  
 4 aspects of this particular piece, but if this  
 5 was purely a technical issue and it was an  
 6 issue of technology or something, then beefing  
 7 up quality assurance wasn't going to be an  
 8 appropriate response, it's a matter of  
 9 replacing the technology. Adding more staff  
 10 wouldn't have been an appropriate response.  
 11 So when you see -- if the response to an issue  
 12 is adding more staff and dedicating more  
 13 staff, and putting training initiatives in  
 14 place and putting in place quality assurance  
 15 programs, then obviously the root cause of  
 16 this is something more than just a piece of  
 17 technology.  
 18 MS. CHAYTOR:  
 19 Q. Yes. So you were left with a level of  
 20 discomfort that nobody seemed to be able to  
 21 say what went wrong?  
 22 MR. WISEMAN:  
 23 A. Exactly.  
 24 MS. CHAYTOR:  
 25 Q. And then if we'd reflect that back then to the

Page 184

1 bullet immediately before, you have been told  
 2 that ER/PR testing has resumed in St. John's.  
 3 Mr. Wiseman, did that cause you concern, they  
 4 didn't know what went wrong, and yet they've  
 5 resumed testing?  
 6 MR. WISEMAN:  
 7 A. The level of comfort that I had with the  
 8 testing that had been -- resuming of the  
 9 testing, I had been advised that these quality  
 10 initiatives had been implemented, so basically  
 11 what they were describing for me as having  
 12 been done reflected what you would normally  
 13 expect to see as someone described what is  
 14 current best practice, and it had been  
 15 validated by the fact that there had been two  
 16 external reviews that had been concluded and a  
 17 series of recommendations had been made by  
 18 those external reviews, and the  
 19 recommendations had been implemented. So the  
 20 comfort level that I had with the fact that  
 21 there was testing going on by this time, you  
 22 know, was -- I took some comfort in the fact  
 23 that those things were now in place, but the  
 24 issue around what happened between 1997 and  
 25 2005 wasn't as clear.

Page 185

1 MS. CHAYTOR:  
 2 Q. But if they haven't identified the root cause,  
 3 how can you have comfort that they've fixed it  
 4 and are now able to go on with the testing?  
 5 MR. WISEMAN:  
 6 A. I think -- my sense was they weren't able to  
 7 understand exactly what went wrong themselves.  
 8 I wasn't hearing it from them that they knew  
 9 what went wrong, but what I relied on and took  
 10 some comfort in is that they now have in place  
 11 -- if you're starting a lab from the very  
 12 first day and you put in place quality  
 13 assurance initiatives, you're getting advice  
 14 from external people who are experts in this  
 15 field, or supposed to be experts in the field  
 16 giving you advice as to what to do, which is  
 17 what would be akin to the external reports,  
 18 and then you have a dedicated group of staff  
 19 who are working on it, you have put in place  
 20 training for the staff you have, you have  
 21 dedicated Director of Laboratory Services, and  
 22 you put those initiatives in place, these  
 23 reflect what should be best practices in  
 24 operating any area of the lab.  
 25 MS. CHAYTOR:

Page 186

1 Q. So you weren't left with any discomfort on May  
 2 15th that they were resuming testing, although  
 3 had not identified the problem?  
 4 MR. WISEMAN:  
 5 A. My comfort came about as a result of what was  
 6 current practice, and if they had put in place  
 7 a range of initiatives that reflected what  
 8 should be, and I guess my judgment was at the  
 9 time that these are current -- what should be  
 10 in place in any quality lab, that if they are  
 11 doing that, then they should be able to move  
 12 forward with a reopening of the lab and  
 13 starting to test. The other piece that had  
 14 been assured is that the people who did the  
 15 external reviews had made a series of  
 16 recommendations that had been implemented, and  
 17 that they concurred with the reopening of the  
 18 lab.  
 19 MS. CHAYTOR:  
 20 Q. And you were told that, that they concurred --  
 21 that Trish Wegrynowski concurred with the  
 22 reopening of the lab?  
 23 MR. WISEMAN:  
 24 A. The name wasn't used, but --  
 25 MS. CHAYTOR:

Page 187

1 Q. But both the external reviews?  
 2 MR. WISEMAN:  
 3 A. But there was a -- a reference to concurrence  
 4 with the lab to reopen.  
 5 MS. CHAYTOR:  
 6 Q. And that was told to you by whom?  
 7 MR. WISEMAN:  
 8 A. I don't remember who might have shared it. It  
 9 might have been -- that kind of commentary  
 10 sounds like it would have come from Mr.  
 11 Tilley, but I wouldn't want to attribute it to  
 12 him because I don't recall exactly who would  
 13 have shared it.  
 14 MS. CHAYTOR:  
 15 Q. And if your Department made any inquiries back  
 16 prior to February 1st, 2007, to be able to  
 17 state and assure itself that you're confident  
 18 in going forward and opening -- and reopening  
 19 the testing at St. John's, if any of that  
 20 inquiry was made by your Department, you  
 21 weren't aware of it?  
 22 MR. WISEMAN:  
 23 A. I wasn't aware, no.  
 24 MS. CHAYTOR:  
 25 Q. So any questioning, if any, which took place

Page 188

1 in January or before that by your Department  
 2 as to whether or not it is indeed safe to now  
 3 resume, whether or not your Department was  
 4 even consulted, you're not aware?  
 5 MR. WISEMAN:  
 6 A. I'm not aware of that.  
 7 MS. CHAYTOR:  
 8 Q. Okay. We'll just continue on then with the  
 9 briefing note, the same bullet then indicates,  
 10 "That since legal proceedings have been  
 11 initiated, Government will have to allow the  
 12 legal process to determine if, in fact, error  
 13 has occurred". What did you understand that  
 14 to mean?  
 15 MR. WISEMAN:  
 16 A. The only discussion I had around the legal  
 17 piece was that when Eastern Health released  
 18 the information in December of '06, the  
 19 information that they released in December of  
 20 '06 was guided by legal advice that they had.  
 21 MS. CHAYTOR:  
 22 Q. Yes, and who told you that?  
 23 MR. WISEMAN:  
 24 A. Mr. Tilley would have told me that.

1 MS. CHAYTOR:  
 2 Q. What did he tell you?  
 3 MR. WISEMAN:  
 4 A. That the information -- that was in the  
 5 context of a discussion around why did you not  
 6 release the other piece of the information,  
 7 and so it came about as a response in the  
 8 context of the discussion around what you  
 9 released in December being different than what  
 10 was now obviously in the public domain.  
 11 MS. CHAYTOR:  
 12 Q. And I'll come to that. I just want to deal  
 13 within the briefing note now what this might  
 14 mean because obviously when this is written on  
 15 April 19th, that's not an issue. "Since legal  
 16 proceedings have been initiated, Government  
 17 will have to allow the legal process to  
 18 determine if, in fact, error has occurred".  
 19 Is that -- is that the position of the  
 20 Government that once legal proceedings are  
 21 initiated, that it doesn't then take any role  
 22 in determining whether or not error has taken  
 23 place in the lab?  
 24 MR. WISEMAN:  
 25 A. I'm not certain why -- the person who drafted

1 A. My only discussion around litigation was the  
 2 discussion with Eastern Health around why --  
 3 MS. CHAYTOR:  
 4 Q. And we'll come to that.  
 5 MR. WISEMAN:  
 6 A. Yeah.  
 7 MS. CHAYTOR:  
 8 Q. So this idea or this notion that once legal  
 9 proceedings are initiated, that the Government  
 10 will take no role in trying to figure out if  
 11 an error has occurred which could have adverse  
 12 consequences to the people in this province,  
 13 you didn't raise that as an issue or talk to  
 14 your people and say, well, where did that  
 15 notion ever come from?  
 16 MR. WISEMAN:  
 17 A. It doesn't espouse my view either.  
 18 MS. CHAYTOR:  
 19 Q. But you didn't raise it as an issue and say,  
 20 well, where does that notion come from?  
 21 MR. WISEMAN:  
 22 A. I don't recall raising it as an issue, no.  
 23 MS. CHAYTOR:  
 24 Q. Okay.  
 25 MR. WISEMAN:

1 this, Ms. Griffiths, or the person who  
 2 approved it, Ms. Hennessey, I'm not certain  
 3 what they would have meant by that comment.  
 4 All I'm sharing with you is the only  
 5 discussion I had around legal proceedings in  
 6 this discussion was trying to get a better  
 7 understanding and try to understand the  
 8 rationale for not having provided a more  
 9 fuller disclosure in the December briefing.  
 10 So my discussion around legal issues would  
 11 have come up in that context. I'm not sure  
 12 here that -- I don't know why someone would  
 13 have said here in this context here that the  
 14 legal -- let me just phrase it again, "Since  
 15 legal proceedings have now been initiated,  
 16 Government will have to allow the legal  
 17 process to determine if, in fact, errors  
 18 occurred". That wouldn't have been my  
 19 position as a Minister, and it's not something  
 20 I would have written in this context that  
 21 we're dealing with here.  
 22 MS. CHAYTOR:  
 23 Q. So when you're reading that, did you take  
 24 issue with that that day?  
 25 MR. WISEMAN:

1 A. But it's not something that I would have  
 2 espoused, and to come back to your earlier  
 3 question in terms of who would speak on behalf  
 4 of the Department and Government on this  
 5 issue, I would be the spokesperson so a view  
 6 that's expressed in a internal note would not  
 7 have been espoused by me.  
 8 MS. CHAYTOR:  
 9 Q. Right. Okay, so that's not your view, nor is  
 10 it the position of Government?  
 11 MR. WISEMAN:  
 12 A. No.  
 13 MS. CHAYTOR:  
 14 Q. And we all know, of course, some of us in this  
 15 room more so than others, or most people in  
 16 this room know that legal proceedings can be  
 17 quite protracted.  
 18 MR. WISEMAN:  
 19 A. Yes.  
 20 MS. CHAYTOR:  
 21 Q. So I take it the Government would not be  
 22 waiting for legal proceedings to be finalized  
 23 in order for the Government to determine  
 24 whether or not there has been an error in one  
 25 of its laboratories which could have adverse



Page 193

1 consequences to the health of the people of  
 2 the province?  
 3 MR. WISEMAN:  
 4 A. Not at all. That's why I make that  
 5 distinction between this being -- I think it's  
 6 an important point to be clear on. This is an  
 7 internal note written by someone, recognizing  
 8 that the people who write this would not be  
 9 the people who would speak on behalf of  
 10 Government, which speaks to your point  
 11 earlier.  
 12 MS. CHAYTOR:  
 13 Q. What's the intention, though? Isn't the  
 14 intention --- this is your key messages.  
 15 Isn't the intention that this would be key  
 16 messages that you would have before you to be  
 17 able to stand up and speak to the issue should  
 18 the issue arise in the House?  
 19 MR. WISEMAN:  
 20 A. Briefing notes have -- there's two primary  
 21 functions of briefing notes. One is to  
 22 prepare, as you just said, a Minister to speak  
 23 in the House or speak in some other forum on  
 24 an issue. They're done in bullet form and  
 25 they're key points, and they're prepared by

Page 194

1 officials who -- you know, this is what  
 2 they're sharing as being the view that they  
 3 might have. The other form of briefing note  
 4 is to provide information so you don't have  
 5 necessarily anticipated questions or Q & A,  
 6 but just to provide information on a topic,  
 7 and again they're to inform the Minister. In  
 8 terms of the -- especially, I guess, in recent  
 9 past where we've become much more acutely  
 10 aware of the significance of how more  
 11 formalized briefing note processes should  
 12 become, the piece around signing off on it has  
 13 been instituted. Frequently now, and very  
 14 frequently, I will not sign off on briefing  
 15 notes until certain wording is changed because  
 16 it's now -- I've become much more acutely  
 17 aware of how even though I may not espouse  
 18 some things in a note, how the note itself  
 19 gets interpreted and may be interpreted by  
 20 others, but clearly in the context of notes  
 21 that I would have received back then, are  
 22 notes that many times you might find there are  
 23 suggested questions or answers or commentary  
 24 that key messages that you may never hear me  
 25 speak because it's not an answer that I

Page 195

1 believe is an appropriate answer to the  
 2 question. So I'm guided by it, but I'm not  
 3 bound by it.  
 4 MS. CHAYTOR:  
 5 Q. So up to this point in time, had you ever sent  
 6 a briefing note back to the drafter and said  
 7 that's not appropriate or that's not correct,  
 8 that's not how this Department works?  
 9 MR. WISEMAN:  
 10 A. Not very much prior to this, but in current  
 11 practice --  
 12 MS. CHAYTOR:  
 13 Q. We're going to get to the current practice and  
 14 how that may have evolved to where it is today  
 15 because I believe there may be some relevance  
 16 to this issue in that.  
 17 MR. WISEMAN:  
 18 A. Yeah, and up to this --  
 19 MS. CHAYTOR:  
 20 Q. But prior to this --  
 21 MR. WISEMAN:  
 22 A. Up to this particular point, I wouldn't want  
 23 to suggest to you that I had sent back a large  
 24 group of briefing notes, if any, actually. I  
 25 took the briefing notes, read them, and thank

Page 196

1 you, I'll use some of it, I may not use all of  
 2 it, and that's how I -- you know.  
 3 MS. CHAYTOR:  
 4 Q. Yes. Now Moira Hennessey is in the room when  
 5 you're having the discussion around this issue  
 6 on May 15th. Moira Hennessey is the person  
 7 who approved this briefing note. Did you ask  
 8 Moira Hennessey where did you get that notion?  
 9 MR. WISEMAN:  
 10 A. No. This particular -- if you're referring to  
 11 this sentence here, as I said to you a moment  
 12 ago, the only discussion around legal issues  
 13 that I would have raised at that time came up  
 14 --  
 15 MS. CHAYTOR:  
 16 Q. So the answer is "no".  
 17 MR. WISEMAN:  
 18 A. Came up in the context of the issue that --  
 19 the conversation that I had with Mr. Tilley  
 20 around why they didn't have a fuller  
 21 disclosure in the December briefing.  
 22 MS. CHAYTOR:  
 23 Q. So if you had been asked the question in the  
 24 House on this issue, you would have had no  
 25 hesitation in standing up and answering

Page 197

1 whatever questions were put to you regardless  
 2 of the fact that legal proceedings were before  
 3 the courts?  
 4 MR. WISEMAN:  
 5 A. I wouldn't have any difficulty, no, not at  
 6 all.  
 7 THE COMMISSIONER:  
 8 Q. It's about time for the luncheon break. Is  
 9 this a convenient place?  
 10 MS. CHAYTOR:  
 11 Q. Yes, this is a convenient time. Thank you.  
 12 THE COMMISSIONER:  
 13 Q. All right then, we'll break until two.  
 14 (ADJOURNED FOR LUNCH)  
 15 THE COMMISSIONER:  
 16 Q. Ms. Chaytor.  
 17 MS. CHAYTOR:  
 18 Q. Thank you, Commissioner. Good afternoon, Mr.  
 19 Wiseman.  
 20 MR. WISEMAN:  
 21 A. Afternoon.  
 22 MS. CHAYTOR:  
 23 Q. I believe when we left off, we were still  
 24 looking at the briefing note of April 19th,  
 25 and you were using this in the context of your

Page 198

1 briefing on May 15th, 2007, and what may have  
 2 been told to you in that briefing. We had  
 3 been speaking about under key messages the  
 4 fourth -- sorry, fifth bullet, and you  
 5 indicated that you did not agree, it wasn't  
 6 your opinion, nor was it the position of the  
 7 Government that since legal proceedings have  
 8 been initiated, Government will allow the  
 9 legal process to determine if, in fact, any  
 10 errors occurred, and I think you were clear on  
 11 that point. Mr. Wiseman, if you had been  
 12 asked or were asked whether or not errors had  
 13 occurred or were told the nature of those  
 14 errors, you would have had no difficulty in  
 15 speaking and addressing that issue?  
 16 MR. WISEMAN:  
 17 A. No difficulty whatsoever.  
 18 MS. CHAYTOR:  
 19 Q. We continue on then with the briefing note,  
 20 and we have other suggested responses, and  
 21 under the first bullet it indicates, "Eastern  
 22 Health has put a number of measures in place  
 23 to provide a high standard of ER/PR testing.  
 24 These measures include a quality management  
 25 program, seeking national accreditation for

Page 199

1 the laboratory, and ensuring all technologists  
 2 and pathologists receive special training".  
 3 Now did you ask any questions around that in  
 4 your meeting and briefing of May 15th?  
 5 MR. WISEMAN:  
 6 A. There wouldn't have been a lot of questions  
 7 with respect to the level of detail that may  
 8 have included, in other words, not to have  
 9 mapped out for me a comprehensive  
 10 understanding of what each of those components  
 11 would have meant. In general terms, they would  
 12 have been outlined as espoused here in the  
 13 note, with probably some elaboration, but not  
 14 a high level of detail of what the quality  
 15 management program would have included, other  
 16 than on that particular point I understood  
 17 that there was -- as part of that process, you  
 18 know, some of the samples that were -- tests  
 19 being one now would be sent out for  
 20 validation.  
 21 MS. CHAYTOR:  
 22 Q. Yes.  
 23 MR. WISEMAN:  
 24 A. By other labs, and that would have been  
 25 inherent in the quality management program.

Page 200

1 MS. CHAYTOR:  
 2 Q. And had they already done that, had samples  
 3 already gone out for external review, and if  
 4 so, did you ask what the results of that would  
 5 have been?  
 6 MR. WISEMAN:  
 7 A. I can't recall.  
 8 MS. CHAYTOR:  
 9 Q. Whether or not they actually had had this  
 10 external proficiency testing done at that  
 11 point in time?  
 12 MR. WISEMAN:  
 13 A. No, I can't recall if I asked the question,  
 14 nor I can't recall if they told me that they  
 15 had.  
 16 MS. CHAYTOR:  
 17 Q. But it was indicated to you that this is one  
 18 of the measures that is now being put in  
 19 place?  
 20 MR. WISEMAN:  
 21 A. Yes, as part of the quality management  
 22 program.  
 23 MS. CHAYTOR:  
 24 Q. Okay, and in terms of laboratory personnel,  
 25 the technologists and pathologists receiving

Page 201

1 special training, was it your understanding  
 2 that that had already taken place?  
 3 MR. WISEMAN:  
 4 A. It was.  
 5 MS. CHAYTOR:  
 6 Q. Okay.  
 7 MR. WISEMAN:  
 8 A. That's tied into the second -- the bullet that  
 9 follows that too under the same heading  
 10 because it goes on to elaborate about some of  
 11 the human resource issues that they had dealt  
 12 with during that same -- in preparation for  
 13 the opening.  
 14 MS. CHAYTOR:  
 15 Q. Okay. So this bullet talks about having  
 16 implemented the recommendations from two  
 17 external reviews.  
 18 MR. WISEMAN:  
 19 A. Uh-hm.  
 20 MS. CHAYTOR:  
 21 Q. It says, "Eastern Health has implemented the  
 22 recommendations from two external reviews, and  
 23 a dedicated laboratory has been established to  
 24 perform the ER/PR testing with three  
 25 designated technologists", and you're right,

Page 202

1 it goes on from there, and I believe you told  
 2 us this morning that it was your understanding  
 3 that both external reviewers had been back to  
 4 St. John's and had indicated it was okay to  
 5 resume the ER/PR testing and that all their  
 6 recommendations had been implemented?  
 7 MR. WISEMAN:  
 8 A. I understood from the conversation that the  
 9 recommendations -- you're using the phrase  
 10 "all". I think I indicated the  
 11 recommendations -- what was told to me the  
 12 recommendations had been implemented, and, in  
 13 fact, I don't know if both -- because there  
 14 was two reports, and there was an indication  
 15 from those reports or "the" report, that there  
 16 was a -- you know, a suggestion that the lab  
 17 was okay to -- the section of the lab or the  
 18 retesting of the ER/PR test was now able to be  
 19 resumed.  
 20 MS. CHAYTOR:  
 21 Q. I just want to be clear. You understood that  
 22 the two reviewers had come back to St. John's.  
 23 Did you understand that they both indicated  
 24 that it was okay to resume ER/PR testing?  
 25 MR. WISEMAN:

Page 203

1 A. I wouldn't be that specific to say that I was  
 2 told that both indicated, but I understand  
 3 from the conversation we had that day that the  
 4 recommendations of the reviews had been  
 5 implemented, and that there had been an  
 6 indication that the ER/PR testing was now able  
 7 to be resumed based on those reviews that had  
 8 been done and the implementation of the  
 9 recommendations.  
 10 MS. CHAYTOR:  
 11 Q. And if you had been told that two reviewers,  
 12 but both of them may not have, I would take it  
 13 that would have raised some questions in your  
 14 mind?  
 15 MR. WISEMAN:  
 16 A. Well, I didn't -- I just want to make sure in  
 17 clarifying in your answer because you're  
 18 asking did I understand both of them.  
 19 MR. WISEMAN:  
 20 A. Yes.  
 21 MS. CHAYTOR:  
 22 Q. And I wasn't that specific in my understanding  
 23 from that -- what I gleaned from that  
 24 discussion, so I wouldn't want to suggest that  
 25 I understood clearly that both of them had

Page 204

1 made that same recommendation, so I'm making  
 2 that point clear.  
 3 MS. CHAYTOR:  
 4 Q. Right. Well, what impression then were you  
 5 left with? Two external reviewers had come  
 6 in. What was your impression?  
 7 MR. WISEMAN:  
 8 A. The suggestion was that the ER/PR testing  
 9 could resume. Now I didn't qualify that to  
 10 make sure that both had said or one had said,  
 11 or which one had said. I didn't get into that  
 12 kind of qualification of the answer.  
 13 MS. CHAYTOR:  
 14 Q. But if you had thought that only one was  
 15 saying it, I assume you would have asked,  
 16 well, what about the other reviewer?  
 17 MR. WISEMAN:  
 18 A. And I didn't -- I wouldn't want to reflect on  
 19 what I would have assumed then. I took comfort  
 20 in what I heard.  
 21 MS. CHAYTOR:  
 22 Q. Okay, and you, along with your predecessors,  
 23 certainly Mr. Osborne, told us back in 2006  
 24 back when he first took on the position, I  
 25 believe, in March, 2006, understood that the

Page 205

1 recommendations had been implemented.  
 2 MR. WISEMAN:  
 3 A. Yes.  
 4 MS. CHAYTOR:  
 5 Q. And that was certainly your understanding now  
 6 --  
 7 MR. WISEMAN:  
 8 A. Yes.  
 9 MS. CHAYTOR:  
 10 Q. As of May of 2007. Perhaps we could have a  
 11 look at P-048, please. Mr. Wiseman, this is  
 12 what's referred to as the cover letter to --  
 13 I'm sorry, you're using the mouse too?  
 14 MR. WISEMAN:  
 15 A. No, no, I reached my hand out, but I didn't  
 16 touch it.  
 17 MS. CHAYTOR:  
 18 Q. This is a cover letter to Dr. Bob Williams,  
 19 May 2nd, 2005, from Trish Wegrynowski, who we  
 20 understand is one of the two external  
 21 reviewers.  
 22 MR. WISEMAN:  
 23 A. Uh-hm.  
 24 MS. CHAYTOR:  
 25 Q. And the document that she's forwarding along

Page 206

1 is referred to as a quality reassessment  
 2 review of the immunohistochemistry laboratory,  
 3 Health Care Corporation of St. John's.  
 4 MR. WISEMAN:  
 5 A. Uh-hm.  
 6 MS. CHAYTOR:  
 7 Q. Presumably, that should be Eastern Health, and  
 8 this is dated May 2nd, 2006. So this is the  
 9 subsequent report of Ms. Wegrynowski, and she  
 10 returned to St. John's, we understand from the  
 11 first -- well, page four of the exhibit, but  
 12 the first full page of her report, she was in  
 13 St. John's March 30th and 31st, 2006, at the  
 14 request of Dr. Williams. So she carried out a  
 15 reassessment at that time. If we could go,  
 16 please, then to page 49 of the exhibit. I'm  
 17 sorry, page 19. It's page 49 of the document.  
 18 Thank you. Throughout this report -- Mr.  
 19 Wiseman, have you had an opportunity to look  
 20 at this report? I know the last time we met,  
 21 you had not.  
 22 MR. WISEMAN:  
 23 A. I have, yes.  
 24 MS. CHAYTOR:  
 25 Q. So since your interview in --

Page 207

1 MR. WISEMAN:  
 2 A. March.  
 3 MS. CHAYTOR:  
 4 Q. March 13th.  
 5 MR. WISEMAN:  
 6 A. Uh-hm.  
 7 MS. CHAYTOR:  
 8 Q. Okay, and you'll see that there's a number --  
 9 you've probably noted then that there were a  
 10 number of recommendations that she had. While  
 11 her report is dated May 2nd, she was, in fact,  
 12 here in -- she was here at the end of March in  
 13 2006. There's a number of recommendations  
 14 including under the quality assurance piece,  
 15 and I think page 19 is the last of those,  
 16 which gives 32, I believe, recommendations at  
 17 that point in time, some of which you would  
 18 have identified if you compared the two  
 19 reports, if you've had an opportunity to do  
 20 that, some of those would have happened --  
 21 would have been identified by her during her  
 22 original visit. Then page 20, under  
 23 "Conclusions", come down to the bottom of the  
 24 page there, she talks about, "The Director of  
 25 the Immunohistochemistry Laboratory has begun

Page 208

1 teaching the registered technologists how to  
 2 assess the external positive controls. This  
 3 will be facilitated by the addition of the  
 4 multi-header microscope in the laboratory.  
 5 After the training is completed and competency  
 6 documentation is signed, evaluating the  
 7 external positive and negative patient  
 8 controls will become part of their scope of  
 9 practise. This is essential because the  
 10 laboratory director or their designee should  
 11 be reviewing all control slides each day of  
 12 patient testing", and then at the top of the  
 13 next page, "Also keep in mind, with the change  
 14 of processing techniques, new control tissue  
 15 must be collected to ensure that the patient  
 16 sample and known positive controls are treated  
 17 in the exact same manner. Testing of patient  
 18 samples should not be done until the  
 19 validation is completed", and the next  
 20 paragraph, "The stringency required to ensure  
 21 the reproducibility of all  
 22 immunohistochemistry testing is paramount. No  
 23 antibodies should be used on a patient until  
 24 after documented validation is completed".  
 25 Then she goes on with some other points in her

Page 209

1 conclusion. Then if we could have, please, P-  
 2 049. So it appears from the second report of  
 3 Ms. Wegrynowski that there were still things  
 4 that she wished to see in place she's  
 5 identified while there's still a continuing 32  
 6 recommendations and then her conclusion. I  
 7 don't see anywhere in there where she's saying  
 8 it's okay now to go ahead and resume ER/PR,  
 9 but if we have a look then at -- this is the  
 10 follow-up report of Dr. Banerjee, P-049, and  
 11 Dr. Banerjee comes along after Ms.  
 12 Wegrynowski, and the first page of his report,  
 13 page three of the exhibit, his report is  
 14 written May 21st, 2006. So while the report is  
 15 dated later, my understanding is that he --  
 16 the report is dated later, and he, in fact,  
 17 was here later. Page three, he indicates that  
 18 he's here April 24th, 2006. Then he goes  
 19 through a number of recommendations -- prior  
 20 recommendations and implementation status,  
 21 some of which are in progress and more of  
 22 which are implemented. On page six of the  
 23 exhibit under "Recommendations", he, in fact,  
 24 does say ER/PR tests may be resumed effective  
 25 immediately. So Dr. Banerjee, we understand,

Page 210

1 is a pathologist, and whatever recommendations  
 2 he had made, he was satisfied, it appear at  
 3 his point in time, that the ER/PR tests could  
 4 be resumed effective immediately. Now in  
 5 terms of the recommendations, if we could  
 6 have, please, P-0277, page six. Now it may be  
 7 difficult to fit this onto the page here.  
 8 MR. WISEMAN:  
 9 A. I have a hard copy of that here if you want --  
 10 MR. WISEMAN:  
 11 A. Okay, that will be helpful. I have a hard  
 12 copy as well, so that might be easier to  
 13 follow along from. This document, Minister,  
 14 we understand was put together by Eastern  
 15 Health. You'll see at the top it's indicated  
 16 to be recommendations immunohistochemistry  
 17 service, and it's a spreadsheet, Dr. D.  
 18 Banerjee/Trish Wegrynowski, and this one has  
 19 been updated April 26th, 2007, by Dr. Denic,  
 20 Dr. Elms, T. Gulliver, who we understand is  
 21 Terry Gulliver, and B. Dyer. Do you see that  
 22 at the top of the page?  
 23 MR. WISEMAN:  
 24 A. Uh-hm.  
 25 MS. CHAYTOR:

Page 211

1 Q. Bear in mind your briefing note of April 19th,  
 2 2007, indicating that the recommendations have  
 3 been implemented, that would predate this by  
 4 approximately a week. This is updated April  
 5 26th, 2007. See that, this is the updated  
 6 version?  
 7 MR. WISEMAN:  
 8 A. Yes.  
 9 MS. CHAYTOR:  
 10 Q. There are two or three other versions of this?  
 11 MR. WISEMAN:  
 12 A. Yes.  
 13 MS. CHAYTOR:  
 14 Q. And this one is updated April 26th, 2007. Do  
 15 you have that in your book?  
 16 MR. WISEMAN:  
 17 A. I do have that, yes.  
 18 MS. CHAYTOR:  
 19 Q. All right, and you'll see here across the top,  
 20 there's the recommendations, and the document  
 21 goes on -- there's actually 52 enumerated  
 22 recommendations. Then "recommended by", and  
 23 Dr. Banerjee or Trish Wegrynowski's name  
 24 appears in these columns and sometimes both,  
 25 "agree with", and presumably that's whether or

Page 212

1 not the people at Eastern Health who are  
 2 reviewing this agreed with the recommendation;  
 3 "current status", and then "expected  
 4 completion date". So if we look through first  
 5 of all number (3), the recommendation was  
 6 consideration to use the rabbit antibody as PI  
 7 for ER testing, and Dr. Banerjee had suggested  
 8 that, and it's indicated "no agreement with",  
 9 and it was still being discussed. Then if we  
 10 come down under the next one, number (8),  
 11 reinstitute VENTANA ER/PR service, and that's  
 12 recommended by and it's indicated to be Dr.  
 13 Banerjee, "yes", they agree with it, and then  
 14 the doctors who are investigating it and it's  
 15 indicated to be completed February '07. I  
 16 just draw your attention to that in terms of  
 17 Dr. Banerjee has made that recommendation.  
 18 There are other places, for example, number  
 19 (2), where the recommendation is by Banerjee  
 20 and Wegrynowski, and that's indicated to be  
 21 so, but for this it is Dr. Banerjee who has  
 22 made that recommendation. Number (10),  
 23 redesign communication structure to provide  
 24 better joint technical/medical accountability,  
 25 IHC, text report to Division Manager and

Page 213

1 Section Head, depending upon issue, and again  
 2 that was a recommendation of both external  
 3 reviewers. and was agreed with by Eastern  
 4 Health personnel. Regular meetings to be  
 5 scheduled and that's ongoing. If we come down  
 6 to number (16), procedure manual outlining the  
 7 SOPs. Do you know what SOP's are? In your  
 8 former life, you probably do.  
 9 MR. WISEMAN:  
 10 A. No, I don't know.  
 11 MS. CHAYTOR:  
 12 Q. I understand they're standard operating  
 13 procedures. So procedure manual outlining  
 14 SOP's to be created for all IHC antibodies and  
 15 methods including the VENTANA Operator's  
 16 Manual, and that was a recommendation of Trish  
 17 Wegrynowski, agreed with. It's current status  
 18 is "in progress", and it's ongoing. You'll  
 19 see sometimes the recommendations are  
 20 indicated to be completed and ongoing, or just  
 21 "completed and completed", but this is "in  
 22 progress and ongoing". Number (24), IHC  
 23 technologists to be trained to assess the  
 24 quality and specificity of staining for IHC  
 25 daily control. I think that's obviously a

Page 214

1 typo, that should be specificity, and that's  
 2 recommended by Trish Wegrynowski, and they're  
 3 in agreement with it. It's in progress,  
 4 however, and ongoing. Number (31), we have  
 5 SOP's, standard operating procedures for  
 6 accessing, grossing and fixation, and again  
 7 it's a recommendation of Trish Wegrynowski,  
 8 agreed with, and it's indicated that B. Dyer  
 9 and Drs. Morris, Larkin, and Carter are  
 10 working on this. The expected completion date  
 11 is somewhere between September '06 and March  
 12 '08. So just last month, and bear in mind  
 13 that this is an April, 2007 document. Number  
 14 (32) SOP's again, and performance evaluation  
 15 of PAS documented, and that's Trish  
 16 Wegrynowski, it's in agreement, and it's not  
 17 expected to be completed until March of 2008.  
 18 Number (33) refrigerations required for the  
 19 ORS. Again that's Trish Wegrynowski, and it's  
 20 indicated to be in agreement with, and it says  
 21 "It's received an SCM not done", and we  
 22 understand that to mean St. Clare's Mercy  
 23 Hospital not done. Completion date expected,  
 24 July '06. So our understanding is that as of  
 25 this date, April, 2007, it was not done for

Page 215

1 St. Clare's Hospital. Number (36) procedures  
 2 for handling of sub-optimal specimens, again  
 3 this was a recommendation of Ms. Wegrynowski,  
 4 in agreement by Eastern Health, and the  
 5 current status is from Dr. Barry Dyer and Dr.  
 6 Denic, and it's "in progress" and it was  
 7 expected to be completed September '07, and  
 8 again bearing in mind this document was April  
 9 '07, ER/PR has been reinstated in February  
 10 of '07. Number (37) SOP's for IHC in  
 11 compliance with Clinical and Laboratory  
 12 Standards Institute recommended by Trish  
 13 Wegrynowski, Eastern Health agrees with it,  
 14 and it's indicated "the latest version has  
 15 been purchased, CD-ROM", and it indicates  
 16 expected completion, they're working on it and  
 17 accreditation. Number (40) Pipette Accuracy  
 18 and Calibration documentation. This again is  
 19 a recommendations of Ms. Wegrynowski, in  
 20 agreement by Eastern Health, and it's in  
 21 progress, ongoing. Number (46) establish  
 22 protocol for false positive staining. Again  
 23 Ms. Wegrynowski, in agreement with Eastern  
 24 Health, in progress-draft, and it's ongoing.  
 25 Number (47) evaluation and appropriate use of

Page 216

1 negative controls. Again this was a  
 2 recommendation of Ms. Wegrynowski, agreed with  
 3 by Eastern Health. Current status, Dr. Denic-  
 4 in draft and it's ongoing. Number (48)  
 5 evaluation and appropriate use of "sausage"  
 6 block for positive and negative controls.  
 7 Again recommended by Ms. Wegrynowski, it's  
 8 agreed with by Eastern Health, and Dr. Denic-  
 9 in draft, and it's ongoing. Number (49) the  
 10 RTs to be trained to assess the quality of  
 11 external positive and negative controls with  
 12 signed documentation retained for two years.  
 13 Again Trish Wegrynowski recommended it, agreed  
 14 with by Eastern Health, and the current  
 15 status, there's a number of people working on  
 16 it, it's in progress and ongoing. (51), The  
 17 quality management policies be shared with  
 18 other regions in the province. That had been  
 19 recommended by Ms. Wegrynowski, agreed with by  
 20 Eastern Health and Dr. Denic was in the  
 21 progress, working on that is ongoing. And  
 22 finally, (52), The QM team should be involved  
 23 with quality improvement, establish quality  
 24 indicators for monitoring purposes, provide a  
 25 mechanism to insure recommendations are dealt

Page 217

1 with and create coercive action logs to  
 2 investigate underlying causes.  
 3 COFFEY, Q.C.:  
 4 Q. "Corrective".  
 5 CHAYTOR, Q.C.:  
 6 Q. I'm sorry. What did I say?  
 7 COFFEY, Q.C.:  
 8 Q. "Coercive."  
 9 CHAYTOR, Q.C.:  
 10 Q. "Corrective," sorry, "corrective." Difficult  
 11 to read on this screen. Thank you, Mr.  
 12 Coffey. And that's Ms. Wegrynowski's  
 13 recommendation. And again, accepted, number  
 14 of people working on it, it's in progress,  
 15 ongoing. So I just took a bit of time, Mr.  
 16 Wiseman, to take you through that. Bearing in  
 17 mind that your briefing note to you when you  
 18 first become alerted to this issue, the  
 19 briefing note you had is week earlier, and a  
 20 week later when this is updated obviously  
 21 there are a number of the recommendations  
 22 that, in fact, had not been implemented. And  
 23 you were not made aware of that on May 15th?  
 24 MR. WISEMAN:  
 25 A. No.

Page 218

1 CHAYTOR, Q.C.:  
 2 Q. So a month beyond your briefing note of April  
 3 19th, when you're meeting then with Mr. Tilley  
 4 on May 15th, you're still of the understanding  
 5 that all the recommendations had been  
 6 implemented?  
 7 MR. WISEMAN:  
 8 A. Yes.  
 9 CHAYTOR, Q.C.:  
 10 Q. Mr. Wiseman, did you ask to see the  
 11 recommendations?  
 12 MR. WISEMAN:  
 13 A. They were faxed in to my office on May the  
 14 31st.  
 15 CHAYTOR, Q.C.:  
 16 Q. Okay. May 31st, 2007?  
 17 MR. WISEMAN:  
 18 A. Yes.  
 19 CHAYTOR, Q.C.:  
 20 Q. Okay.  
 21 MR. WISEMAN:  
 22 A. At the recommendation -  
 23 CHAYTOR, Q.C.:  
 24 Q. And why did you ask for them at that point in  
 25 time?

Page 219

1 MR. WISEMAN:  
 2 A. Well, there had been a discussion, I mean, and  
 3 my recollection of the events, as I was saying  
 4 to you this morning, you know, we had a period  
 5 from, you know, from when I first started  
 6 having discussion around this issue in May  
 7 15th, but there was several weeks that this  
 8 was a fairly intense discussion in around my  
 9 office. And so there had been a fair, you  
 10 know, discussion around the reports  
 11 themselves, you know, the nature of them and  
 12 what was contained in the recommendations and  
 13 flowing from that Eastern Health had then sent  
 14 us a copy of the recommendations themselves  
 15 flowing from the two reports.  
 16 CHAYTOR, Q.C.:  
 17 Q. Okay. If we could have, please, P-0077? And  
 18 I believe this time it's page 9. P-0077, page  
 19 9? No? I have a page 9.  
 20 THE COMMISSIONER:  
 21 Q. Is the first page the same as the one on the  
 22 screen?  
 23 CHAYTOR, Q.C.:  
 24 Q. No, it's not. This is 0077. I'm looking for  
 25 0277, I'm sorry. I'm sorry, 0277. If we

Page 220

1 could make that a little bigger, please?  
 2 Okay. Mr. Wiseman, it's the screen now.  
 3 MR. WISEMAN:  
 4 A. Okay.  
 5 CHAYTOR, Q.C.:  
 6 Q. But this is the fax that I understand was sent  
 7 in to your office?  
 8 MR. WISEMAN:  
 9 A. Yes.  
 10 CHAYTOR, Q.C.:  
 11 Q. You'll see that it's to Tansy Mundon, it's on  
 12 Eastern Health fax transmission page, and the  
 13 date is May 31st, 2007. And attached to that,  
 14 then, if we could go then to the next page,  
 15 page 10, is a document similar to the one that  
 16 I was just bringing your attention to.  
 17 "Recommendations, Immunohistochemistry  
 18 Service." And you'll see at the top  
 19 spreadsheet "Dr. D. Banerjee/Trish  
 20 Wegrynowski." This one, however, is indicated  
 21 to have been updated June 30th, 2006. Do you  
 22 see that at the top there, sir?  
 23 MR. WISEMAN:  
 24 A. Um-hm. I do, yes.  
 25 CHAYTOR, Q.C.:

Page 221

1 Q. You do?  
 2 MR. WISEMAN:  
 3 A. It's the same as the copy, I have a hard copy  
 4 here, yeah.  
 5 CHAYTOR, Q.C.:  
 6 Q. Same one you have the hard copy of, okay. And  
 7 this is the document then that was faxed to  
 8 your office on May 31st, 2007?  
 9 MR. WISEMAN:  
 10 A. Yes.  
 11 CHAYTOR, Q.C.:  
 12 Q. Okay. And we know, of course, there was an  
 13 update to this document.  
 14 MR. WISEMAN:  
 15 A. Yes.  
 16 CHAYTOR, Q.C.:  
 17 Q. I have just taken you in some detail through -  
 18 MR. WISEMAN:  
 19 A. Yes, you did.  
 20 CHAYTOR, Q.C.:  
 21 Q. - the updated document.  
 22 MR. WISEMAN:  
 23 A. Um-hm.  
 24 CHAYTOR, Q.C.:  
 25 Q. In April of 2007?

Page 222

1 MR. WISEMAN:  
 2 A. Exactly.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay. Can you think of any reason why you  
 5 weren't provided with the most recent version  
 6 of this document?  
 7 MR. WISEMAN:  
 8 A. I couldn't answer that. I have no idea. I  
 9 mean, my understanding was I wanted to make  
 10 sure we had the recommendations from the  
 11 report and so what this--what we were faxed  
 12 was the, I guess, the recommendations and  
 13 there hadn't been--I wouldn't want to  
 14 speculate as to why they sent a different  
 15 version.  
 16 CHAYTOR, Q.C.:  
 17 Q. So were you only interested in seeing what the  
 18 actual recommendations were or were you also  
 19 interested in seeing what the status of the  
 20 recommendations -  
 21 MR. WISEMAN:  
 22 A. Well, I'd been advised that the, you know, the  
 23 recommendations had been implemented and  
 24 subsequent discussions had centred around the,  
 25 you know, the reports in question that

Page 223

1 prompted the interest in the recommendations  
 2 themselves.  
 3 CHAYTOR, Q.C.:  
 4 Q. Okay. And this is a listing of 52  
 5 recommendations?  
 6 MR. WISEMAN:  
 7 A. Exactly, yeah.  
 8 CHAYTOR, Q.C.:  
 9 Q. Yes, okay. When you received it and noticed  
 10 that it also contains other information apart  
 11 from the recommendations, it also would tell  
 12 you the current status and the expected  
 13 completion date, did that prompt you to ask  
 14 any more questions?  
 15 MR. WISEMAN:  
 16 A. I can't recall having--you know, other than a  
 17 discussion around the nature of the  
 18 recommendations, I can't recall personally  
 19 being involved with, you know, any future  
 20 discussion around each individual  
 21 recommendation as to where they were at that  
 22 particular moment in time in May of 2007 or  
 23 June of 2007. The officials in the Department  
 24 would have had this information, as well, and  
 25 that, you know, they would have, in their

Page 224

1 discussion with Eastern Health would have  
 2 gleaned some insight as to where they were  
 3 with some of this stuff. But in terms of from  
 4 my perspective, other than to look at the  
 5 recommendations that were made, I didn't  
 6 pursue any detailed discussion with anyone  
 7 around the current status of each one of those  
 8 recommendations.  
 9 CHAYTOR, Q.C.:  
 10 Q. And nobody in your Department either raised  
 11 any question with you about, well, this is  
 12 dated June 30th, '06, and at that point in  
 13 time it appears not all the recommendations  
 14 have been implemented?  
 15 MR. WISEMAN:  
 16 A. I can't recall having that kind of a  
 17 conversation.  
 18 CHAYTOR, Q.C.:  
 19 Q. Is that something that you think you would  
 20 recall?  
 21 MR. WISEMAN:  
 22 A. Pardon me?  
 23 CHAYTOR, Q.C.:  
 24 Q. Is that something you think you would recall,  
 25 if one of your officials, your Deputy Minister



Page 225

1 or Moira Hennessey -  
 2 MR. WISEMAN:  
 3 A. If we had -  
 4 CHAYTOR, Q.C.:  
 5 Q. - had brought to your attention that, "Well,  
 6 this is saying that they weren't all  
 7 implemented back in June of '06. That's  
 8 contrary to our understanding."  
 9 MR. WISEMAN:  
 10 A. Yeah. If someone had raised it with me that--  
 11 because contrary to what I had been told in  
 12 the briefing, which was the recommendations  
 13 are implemented, if something had--if some of  
 14 the officials had come to me after and said,  
 15 you know, "The information contained in your  
 16 briefing note that said that they're  
 17 implemented, we now understand that they're  
 18 not," I would recall that, yes.  
 19 CHAYTOR, Q.C.:  
 20 Q. Right. And it didn't catch your eye or the  
 21 fact that they hadn't all been implemented as  
 22 of June 30th, 2006, that didn't -  
 23 MR. WISEMAN:  
 24 A. The fact that this was a June, '06  
 25 spreadsheet, you know, there's a lot of time

Page 226

1 had lapsed between June, '06 and now this was  
 2 May of '07, so, you know, that wouldn't have  
 3 necessarily caught my eye, the fact there's  
 4 some stuff incomplete in '06.  
 5 CHAYTOR, Q.C.:  
 6 Q. And you didn't ask for an updated version?  
 7 MR. WISEMAN:  
 8 A. I didn't, no. I don't recall having done, so  
 9 I assume I didn't.  
 10 CHAYTOR, Q.C.:  
 11 Q. And nobody in your Department raised with you  
 12 that the briefing notes or the information  
 13 that we had prior to would have suggested that  
 14 as of June 30th, 2006 they should have been  
 15 further along in the process than what's  
 16 indicated in this document?  
 17 MR. WISEMAN:  
 18 A. I can't recall having that conversation, no.  
 19 CHAYTOR, Q.C.:  
 20 Q. Why on May 31st, 2007 did you need to see the  
 21 recommendations?  
 22 MR. WISEMAN:  
 23 A. In the--the discussion that we had had about  
 24 the report itself and a part of this, you  
 25 know, comfort level that had I referred to

Page 227

1 earlier in terms of where we were at that  
 2 particular point in time, some of that comfort  
 3 came, as I said to you this morning, you know,  
 4 we had a quality assurance initiative in place  
 5 and we just, I won't repeat them because  
 6 they're already here in the note we just  
 7 referenced a moment ago, the initiatives that  
 8 they had put in place. But one of the pieces  
 9 of that was the recommendations of these  
 10 outside consultants that had been brought in.  
 11 And you know, I had, it had been shared with  
 12 me that they were completed as a part of a  
 13 peer review process and -  
 14 CHAYTOR, Q.C.:  
 15 Q. And who told you that?  
 16 MR. WISEMAN:  
 17 A. That would have come the Deputy.  
 18 CHAYTOR, Q.C.:  
 19 Q. So Mr. Abbott, at the time?  
 20 MR. WISEMAN:  
 21 A. Abbott would have shared that the -  
 22 CHAYTOR, Q.C.:  
 23 Q. Told you they were part of a peer review  
 24 process?  
 25 MR. WISEMAN:

Page 228

1 A. Exactly. And then so I--we weren't going to  
 2 have access to the full reports. But it came  
 3 as a result of a, you know, continued  
 4 discussion around what was going on, you know,  
 5 within that area of the lab, the ER/PR testing  
 6 area of the lab. Now, precisely what would  
 7 have prompted or what conversation we were  
 8 having that would have prompted my, you know,  
 9 pursuing that, I really can't recall. And,  
 10 but it grew out of that kind of continued  
 11 discussion around this area of the lab at  
 12 Eastern Health.  
 13 CHAYTOR, Q.C.:  
 14 Q. Yes, okay. And, of course, by May 31st the  
 15 Inquiry has already been called. And I'm  
 16 going to take you through up to--because those  
 17 are three or four, as you described earlier,  
 18 intense days from May 15th onwards in terms of  
 19 a lot of action happening from the  
 20 Department's point of view.  
 21 MR. WISEMAN:  
 22 A. Sure.  
 23 CHAYTOR, Q.C.:  
 24 Q. So I'll take you through that. Mr. Abbott  
 25 indicated to you that it was a peer review

Page 229

1 process, the external reviews were through a  
 2 peer review process. Did he indicate to you  
 3 that Mr. Ottenheimer had expected to get the  
 4 reports?  
 5 MR. WISEMAN:  
 6 A. No, he hadn't.  
 7 CHAYTOR, Q.C.:  
 8 Q. That was never told to you, okay. Okay, if we  
 9 could then continue on with the briefing note  
 10 that we were looking at? It's P-0126. Okay,  
 11 and I think we had just looked at the bullet  
 12 regarding that fact that it states "Eastern  
 13 Health has implemented the recommendations  
 14 from two external reviews."  
 15 MR. WISEMAN:  
 16 A. Um-hm.  
 17 CHAYTOR, Q.C.:  
 18 Q. It goes on from there. And that same bullet  
 19 it indicates, "A dedicated laboratory has been  
 20 established to perform the ER/PR testing,  
 21 three designated technologists, a lab medical  
 22 director and a dedicated cutter." Then it  
 23 uses the words "A Centre of Excellence for  
 24 breast cancer cases has been established at  
 25 Eastern Health so that examination and

Page 230

1 reporting will be directed to a dedicated  
 2 group of pathologists." Now, I realize that  
 3 that term "A Centre of Excellence" has shown  
 4 up in the documentation pre-dating your  
 5 involvement in this issue. Does that have any  
 6 kind of connotation from a health  
 7 administration or a medical point of view, a  
 8 Centre of Excellence, is that a term that you  
 9 would have been familiar with?  
 10 MR. WISEMAN:  
 11 A. The terminology, "A Centre of Excellence"  
 12 means, is used to describe, it could be a  
 13 description of the quality of the work that's  
 14 being done in a particular location. It also  
 15 can suggest that this is a, you know, has some  
 16 prominence in either the country or the world  
 17 as being a known Centre of Excellence where  
 18 others would look to for advice or direction  
 19 or in this case some testing. So it has--it  
 20 could be used in both those context.  
 21 CHAYTOR, Q.C.:  
 22 Q. Okay. And what did you think when you're  
 23 reading this, "A Centre of Excellence."?  
 24 MR. WISEMAN:  
 25 A. They had now put together a, you know, a unit

Page 231

1 within that area of the lab that provided  
 2 excellent test results and they were doing  
 3 quality work and so we could refer to it as  
 4 excellent outcomes.  
 5 CHAYTOR, Q.C.:  
 6 Q. A Centre of Excellence?  
 7 MR. WISEMAN:  
 8 A. Yeah.  
 9 CHAYTOR, Q.C.:  
 10 Q. Okay. And -  
 11 MR. WISEMAN:  
 12 A. As a description. I wouldn't have--you know,  
 13 I wouldn't have interpreted it as, and I used  
 14 it later on, actually, in response to a, you  
 15 know, question in the House of Assembly, you  
 16 know, I wasn't referring to it as being some  
 17 place that we had now established in this  
 18 province as something that would be a national  
 19 centre, national prominence. It was just a  
 20 reference to now a process within that area of  
 21 the laboratory that was doing excellent work  
 22 and they had the quality controls in place  
 23 that would have been akin to what you would do  
 24 in any other lab doing quality work in the  
 25 country.

Page 232

1 CHAYTOR, Q.C.:  
 2 Q. Okay. Yes, because I'm going to bring you to  
 3 that. So you actually do go on and use this  
 4 term, "A Centre of Excellence" to describe.  
 5 And what did you do, or what inquiries did you  
 6 make when you're being told this on May 15th  
 7 or you're reading for the first time on May  
 8 15th, "A Centre of Excellence", what did you  
 9 ask to satisfy yourself that that, in fact, is  
 10 what is happening here?  
 11 MR. WISEMAN:  
 12 A. It grew from the bullet that you're referring  
 13 to here and the previous one because those two  
 14 bullets side by side as they run together  
 15 describe for us, you know, the kinds of things  
 16 that had been put in place. You know, they  
 17 refer to a quality management program, they  
 18 talk about technologists and pathologists  
 19 doing special training, they talk about having  
 20 designated technologists put in place, a  
 21 director of laboratory services, they got a  
 22 dedicated cutter. So they talk about those  
 23 things that, you know, are consistent with  
 24 what you might expect to find in a, you know,  
 25 in a laboratory doing quality work, their

Page 233

1 attention to staffing, their attention to  
 2 quality, their attention to insuring the  
 3 specified tasks associated with it and  
 4 adequate numbers of people dedicated to do the  
 5 work.  
 6 MS. CHAYTOR:  
 7 Q. Yes, and the other point in that bullet that  
 8 you didn't mention was that they had  
 9 implemented the recommendations?  
 10 MR. WISEMAN:  
 11 A. Yes, so that would have grown from--I don't  
 12 know if I spent a whole lot of time in this  
 13 discussion focussing on the terminology of the  
 14 Centre of Excellence, the focus of my  
 15 discussion would have been around the  
 16 initiatives that they had implemented.  
 17 MS. CHAYTOR:  
 18 Q. But you felt comfortable enough following it  
 19 to then go on and use the terminology?  
 20 MR. WISEMAN:  
 21 A. Yes.  
 22 MS. CHAYTOR:  
 23 Q. And you understood that that terminology in  
 24 certain circles might mean of national  
 25 prominence?

Page 234

1 MR. WISEMAN:  
 2 A. Used in those two context and I think my, as I  
 3 said to you a moment ago, as I, you know, in  
 4 using it or in reading it here or in repeating  
 5 it myself in the House of Assembly, I wasn't  
 6 at all trying to suggest that we had now  
 7 developed a centre here that we would now be  
 8 able to, you know, or want or intend to  
 9 attract others from around the country to look  
 10 to us as a centre of expertise, but purely one  
 11 of--clearly indicating that what was now being  
 12 done at Eastern Health could be considered  
 13 excellent work, could be considered being  
 14 proficient and the individual should be  
 15 comfortable that they're getting good results  
 16 from the test.  
 17 MS. CHAYTOR:  
 18 Q. And then under "Background", what's the  
 19 purpose of background to a briefing note, Mr.  
 20 Wiseman?  
 21 MR. WISEMAN:  
 22 A. It gives you some substance to the issue at  
 23 hand and it gives you a bit of context for it  
 24 and gives you a little more of the detailed,  
 25 in this particular case, statistical

Page 235

1 information.  
 2 MS. CHAYTOR:  
 3 Q. And there is some statistical information  
 4 contained in this background.  
 5 MR. WISEMAN:  
 6 A. Uh-hm.  
 7 MS. CHAYTOR:  
 8 Q. We come down under the, well in the first  
 9 bullet it refers to--or sorry, it's the second  
 10 bullet it talks about the review period being  
 11 from 1997 to 2005, there were 2,760 ER/PR  
 12 tests conducted at the laboratory and then it  
 13 refers to "939 of these tests were originally  
 14 negative and sent to Mount Sinai for  
 15 retesting. This number represents about 34  
 16 percent of the patients tested for breast  
 17 cancer. All retesting has been completed.  
 18 The chronology of the ER/PR retesting is  
 19 attached as annex I" and there is a chronology  
 20 in fact attached. So this would be the first  
 21 time, I take it, Mr. Wiseman, that you are  
 22 seeing any numbers in relation to this issue?  
 23 MR. WISEMAN:  
 24 A. It is, yes.  
 25 MS. CHAYTOR:

Page 236

1 Q. Okay. And then it goes on to talk about the  
 2 details of the retesting. The details on the  
 3 test results are as follows, and again it  
 4 gives the number for the total cases. It says  
 5 reviewed, did you understand that all the  
 6 tests from 1997 to 2005 had been subjected to  
 7 a review?  
 8 MR. WISEMAN:  
 9 A. A review other than pulling out those that  
 10 were negative, the focus were on those that  
 11 were--needed to be retested.  
 12 MS. CHAYTOR:  
 13 Q. So while it says 2,760 tests were conducted in  
 14 that period of time, they weren't reviewed,  
 15 2,760 were not reviewed and you understood  
 16 that at the time?  
 17 MR. WISEMAN:  
 18 A. Were not being retested, no.  
 19 MS. CHAYTOR:  
 20 Q. So in terms of reviewed, there were 2,760  
 21 tests conducted in that time period, according  
 22 to this briefing note at this point in time,  
 23 and the negatives were pulled out and only the  
 24 negatives were subject -  
 25 MR. WISEMAN:

Page 237

1 A. Yes.

2 MS. CHAYTOR:

3 Q. So there was no review done of the positives,

4 to your knowledge?

5 MR. WISEMAN:

6 A. The terminology that I was separating here was

7 the word "review" and "retest" as having two

8 different meanings. So there was a total

9 number of 2,760 tests performed during that

10 period, so that all of the files were

11 reviewed, and they extracted from those all of

12 those that had tested negatively. And that's

13 where the 939 came from, that's my

14 understanding of those terms of reviewed and

15 retest -

16 MS. CHAYTOR:

17 Q. So there was no review of the positives other

18 than to weed them out for retesting.

19 MR. WISEMAN:

20 A. No retesting of the positives would have -

21 MS. CHAYTOR:

22 Q. Were they otherwise reviewed to your

23 knowledge?

24 MR. WISEMAN:

25 A. I understood that they were reviewed for

Page 238

1 purposes of culling them out of the total

2 number.

3 MS. CHAYTOR:

4 Q. Yes, okay.

5 MR. WISEMAN:

6 A. But I'm not aware, nor was I given the

7 impression that those positive results had

8 actually gone through some other re-

9 examination or retesting.

10 MS. CHAYTOR:

11 Q. Other than culling them out so that they

12 weren't sent for retesting.

13 MR. WISEMAN:

14 A. Yes.

15 MS. CHAYTOR:

16 Q. And then total patients tested or retested,

17 sorry, 939 and patients requiring treatment

18 changes are indicated to be 117. Mr. Wiseman,

19 other than the numbers that you were presented

20 with, did you ask for any other numbers on

21 this day?

22 MR. WISEMAN:

23 A. I can't really recall. We had a fairly, you

24 know, the 15th's conversation was a

25 conversation that, like I shared with you this

Page 239

1 morning that, you know, you were asking about

2 the sequence of events of that day and I

3 shared with you earlier that, you know, I had

4 been given a heads up by Communications

5 Director in the morning about the news item

6 and there was, you know, some brief

7 discussion, and then there was a Cabinet

8 committee that I was involved with and met and

9 that normally meets at around tenish, so I

10 would have gone to that and by the time we

11 finished, I would have got back close to

12 midday or so, so our discussion around the

13 ER/PR that day on the 15th, centred around the

14 noon period through to the House opening at

15 1:30. So my focus was to get as much of an

16 understanding as I possibly could and to find

17 out exactly, you know, what happened with the

18 briefing that had been done in December, where

19 there's a discrepancy and some background and

20 understanding of the issue at hand.

21 MS. CHAYTOR:

22 Q. Right.

23 MR. WISEMAN:

24 A. So it wasn't something that I, you know, we--

25 during that particular discussion had spent a

Page 240

1 long, long time exploring a lot of different

2 issues.

3 MS. CHAYTOR:

4 Q. Right, but bear in mind that the reason that

5 this has been brought to your attention is

6 that you understand there's been a discrepancy

7 in number reporting.

8 MR. WISEMAN:

9 A. Yes.

10 MS. CHAYTOR:

11 Q. So I'm wondering then the numbers that you're

12 presented with here and you're reading this

13 briefing note and you're being briefed by

14 people from the department, as well as Mr.

15 Tilley, is there any--to you, reading that, is

16 there an omission of any particular number

17 that you may have asked for?

18 MR. WISEMAN:

19 A. One of the things we would have talked about

20 is the actual briefing that was done in

21 December, because that was one of the issues

22 before us at that day, there was a discrepancy

23 in what information was provided during a

24 briefing. So we would have had a discussion

25 around the December briefing that was done or

Page 241

1 the information distributed by Eastern Health  
 2 in December, we would have had a discussion  
 3 around that issue.  
 4 MS. CHAYTOR:  
 5 Q. Yes, and that information, of course, was in  
 6 the department.  
 7 MR. WISEMAN:  
 8 A. Yes.  
 9 MS. CHAYTOR:  
 10 Q. That information was in the department. Do  
 11 you know what I'm asking you here in terms of  
 12 when you read that now, is there another  
 13 number that you don't see in this briefing  
 14 note?  
 15 MR. WISEMAN:  
 16 A. The numbers that aren't in this briefing note  
 17 here would be the numbers that would have been  
 18 contained in the--that would have been made  
 19 public by Eastern Health in December. That  
 20 information is not in this note.  
 21 MS. CHAYTOR:  
 22 Q. And would have been provided to Mr. Osborne in  
 23 November of 2006 as well, from what we've been  
 24 told?  
 25 MR. WISEMAN:

Page 242

1 A. Yeah, from what you've been--I don't know.  
 2 MS. CHAYTOR:  
 3 Q. Yes, we have a briefing note to that effect  
 4 from Eastern Health.  
 5 MR. WISEMAN:  
 6 A. Fair enough, okay.  
 7 MS. CHAYTOR:  
 8 Q. And the issue that's now arisen in the media  
 9 is regarding numbers not having been disclosed  
 10 of the total number of patients who had  
 11 changed results, is that right?  
 12 MR. WISEMAN:  
 13 A. Exactly.  
 14 MS. CHAYTOR:  
 15 Q. So that's what's going on this day in the  
 16 media.  
 17 MR. WISEMAN:  
 18 A. Exactly.  
 19 MS. CHAYTOR:  
 20 Q. And when you are looking at this briefing note  
 21 and meeting with people, your people, the  
 22 officials in the department and with Mr.  
 23 Tilley, do you ask the question that number is  
 24 not in this briefing note either?  
 25 MR. WISEMAN:

Page 243

1 A. We would have had that--well, I don't know if  
 2 I would have asked the question why is it not  
 3 in the briefing note, but clearly I would have  
 4 had the discussion because that was one of the  
 5 critical reasons for bringing Mr. Tilley into  
 6 the equation altogether with this issue is  
 7 because, you know, there had been information  
 8 distributed by Eastern Health in December that  
 9 was incomplete, at least according to that  
 10 media story and I wanted to get to better  
 11 understand that. So I don't know if I would  
 12 have raised it with the officials in the  
 13 department about why the detail is not in this  
 14 briefing note, I wouldn't necessarily suggest  
 15 that I did because I really don't recall.  
 16 MS. CHAYTOR:  
 17 Q. So you don't know if you asked Moira Hennessey  
 18 or John Abbott whether or not they knew that  
 19 number, and Moira, who approved the briefing  
 20 note, whether or not when she drafted this in  
 21 April 2007, whether she knew that number?  
 22 MR. WISEMAN:  
 23 A. No, my guess--I don't recall it, my sense  
 24 would be that given my interest in gaining as  
 25 much understanding of where we were now and

Page 244

1 why the discrepancy in the December  
 2 information, you know, the crafting of her  
 3 briefing note and why things may or may not be  
 4 in a certain fashion, I'm don't know if I  
 5 would have done that in that particular  
 6 meeting that day.  
 7 MS. CHAYTOR:  
 8 Q. Yes, but it's a little more than the drafting  
 9 of the briefing note, this is conveying the  
 10 information to you, should you have to stand  
 11 up in the House and give information to the  
 12 public, that is the information that you would  
 13 be provided to give to the public, that's the  
 14 purpose of your briefing note?  
 15 MR. WISEMAN:  
 16 A. Yeah, and I wouldn't have--I don't recall  
 17 having that kind of a discussion with the  
 18 officials during that meeting on the 15th.  
 19 MS. CHAYTOR:  
 20 Q. And did you at any point afterwards then  
 21 wonder why that number was not in your  
 22 briefing note?  
 23 MR. WISEMAN:  
 24 A. One of the things that we did talk about is as  
 25 we continued to have some discussion, I needed

Page 245

1 to, on the 16th, you know, I needed to get a  
 2 clear picture of what was going on and I think  
 3 from here on in the discussions were, you  
 4 know, around having a comfort with the level  
 5 of detail that we were getting and making sure  
 6 that we were, you know, I was getting good  
 7 accurate information coming from officials and  
 8 in turn, them from Eastern Health.  
 9 Recognizing that as a Minister, my source of  
 10 information is the officials in the  
 11 department. On an issue like this, involving  
 12 one of our authorities, their source of  
 13 information is coming directly from the  
 14 authority and so there's, in as much as I'm  
 15 relying on the officials in the department,  
 16 they too sometimes are relying on information  
 17 they're getting from the authority -  
 18 MS. CHAYTOR:  
 19 Q. Yes, but we know that Eastern Health had  
 20 provided all of that information to the  
 21 department, so your officials did have that  
 22 information. So I take it from you answer you  
 23 didn't take it up with Moira Hennessey or John  
 24 Abbott as to why aren't all the numbers in my  
 25 briefing note when they appeared in a briefing

Page 246

1 note to Mr. Osborne back in November of '06  
 2 and were otherwise available in the  
 3 department.  
 4 MR. WISEMAN:  
 5 A. I said I didn't recall having such a  
 6 discussion and my thinking would be that given  
 7 the brevity of that meeting, relatively brief,  
 8 anyway, in preparation for the House, I'm not  
 9 sure I would have gone into that level of  
 10 detail, but I wouldn't say with a high degree  
 11 of certainty that I did or did not.  
 12 MS. CHAYTOR:  
 13 Q. But at any point afterwards as well that issue  
 14 didn't come up -  
 15 MR. WISEMAN:  
 16 A. I don't recall.  
 17 MS. CHAYTOR:  
 18 Q. - even though the issue that brought this to  
 19 your attention was the fact that not all the  
 20 numbers had been disclosed.  
 21 MR. WISEMAN:  
 22 A. No.  
 23 MS. CHAYTOR:  
 24 Q. So you didn't pursue that?  
 25 MR. WISEMAN:

Page 247

1 A. I don't recall it, no.  
 2 MS. CHAYTOR:  
 3 Q. And the next bullet refers to 939 patients,  
 4 included 176 individuals who are deceased, 101  
 5 patients were retested and results received,  
 6 there were two patients who were retested upon  
 7 request and the remaining 73 will not be  
 8 retested unless the families request it. Did  
 9 you ask any questions around that when you  
 10 were being briefed on May 15th?  
 11 MR. WISEMAN:  
 12 A. I recall having, you know, a discussion around  
 13 why the Eastern Health was not pursuing the  
 14 retesting of all of those who had, regardless  
 15 of whether they are living or been deceased  
 16 and the answer I had gotten at the time was  
 17 that, you know, their primary focus initially  
 18 was ensuring that they were able to retest  
 19 those that were still living to determine  
 20 whether or not, you know, they wanted to be  
 21 able to move and if necessary, change a  
 22 treatment. So their focus was on those that  
 23 they knew to be living.  
 24 MS. CHAYTOR:  
 25 Q. Yes, and so that's what was told to you on May

Page 248

1 15th, 2007?  
 2 MR. WISEMAN:  
 3 A. Well that's what I understand in around the  
 4 issue, I wouldn't want to say precisely that I  
 5 was told on the 15th verses the 16th, but  
 6 that's my understanding.  
 7 MS. CHAYTOR:  
 8 Q. In that time period.  
 9 MR. WISEMAN:  
 10 A. Of the issue around why not test all of them  
 11 at that moment and that was the response I  
 12 had.  
 13 MS. CHAYTOR:  
 14 Q. And did anyone indicate to you that Mr.  
 15 Osborne had asked that--was keen to have all  
 16 the deceased retested and that discussion had  
 17 taken place back in November of 2006?  
 18 MR. WISEMAN:  
 19 A. That's the first I heard of that.  
 20 MS. CHAYTOR:  
 21 Q. Okay, so you, to this day, didn't know about  
 22 that?  
 23 MR. WISEMAN:  
 24 A. Know that Minister Osborne had asked for that?  
 25 MS. CHAYTOR:

Page 249

1 Q. That he had been keen to see that all the  
 2 deceased -  
 3 MR. WISEMAN:  
 4 A. No, I wasn't aware of that.  
 5 MS. CHAYTOR:  
 6 Q. At some point in time we know that the  
 7 deceased patients were retested. Was that  
 8 done at your direction?  
 9 MR. WISEMAN:  
 10 A. I understand that--I wouldn't use the word  
 11 "direction" in that I directed them to it in  
 12 the true definition of a directive, but it was  
 13 clear that we needed to, you know, as a  
 14 department wanted to make sure that all of  
 15 them were done.  
 16 MS. CHAYTOR:  
 17 Q. So you did indicate that you wanted to see  
 18 that piece of work take place as well.  
 19 MR. WISEMAN:  
 20 A. I wouldn't suggest that I did it on this day  
 21 or the 16th, but in the course of the  
 22 discussion around, you know, the future  
 23 handling of this issue, you know, I had  
 24 expressed that view.  
 25 MS. CHAYTOR:

Page 250

1 Q. And so your view would have been the same as  
 2 Mr. Osborne's which he had expressed some  
 3 months before.  
 4 MR. WISEMAN:  
 5 A. It would have been, yes.  
 6 MS. CHAYTOR:  
 7 Q. So you did indeed express that. Who did you  
 8 tell that to?  
 9 MR. WISEMAN:  
 10 A. I mean, it's one of these things that would  
 11 have come in a discussion that we would have  
 12 had, as I said a moment ago or earlier this  
 13 morning, you know the Deputy and myself had  
 14 numerous discussions on, one on one, on this  
 15 issue. The days that followed the 15th, there  
 16 are numerous discussions that involved, you  
 17 know, the Deputy and Moira Hennessey and the  
 18 Director of Communication, Tansy Mundon on  
 19 that period of time. So, you know, the period  
 20 from May 15th onward for the next few days,  
 21 there would have been a fair number of  
 22 discussions in and around this issue and even  
 23 beyond a few days in question. So there were  
 24 several weeks of discussion in and around, you  
 25 know, where we were as a province with this

Page 251

1 issue and what should be done in the best  
 2 interest of the people who had been impacted.  
 3 MS. CHAYTOR:  
 4 Q. And so you didn't speak directly yourself to  
 5 somebody at Eastern Health to ask that the  
 6 deceased be retested?  
 7 MR. WISEMAN:  
 8 A. No. I mean, I -  
 9 MS. CHAYTOR:  
 10 Q. But you would have indicated that through your  
 11 officials who passed it on, is that how that  
 12 happened?  
 13 MR. WISEMAN:  
 14 A. Yes, and it may have--I know it was my view  
 15 and I know I expressed it may have come about  
 16 as a discussion that included Mr. Tilley at  
 17 some future time, I'm not certain who might  
 18 have been present when I suggested--if I had  
 19 suggested it to the Deputy or in the company  
 20 of the Deputy and the ADM, then I'm certain  
 21 that they would have and my expectation would  
 22 have been that they would have clearly passed  
 23 that on to Eastern Health. If Mr. Tilley  
 24 happened to be present in the room when I had  
 25 the discussion, you know, my expectation would

Page 252

1 have been that he would have accepted that as  
 2 my wish and desire as well.  
 3 MS. CHAYTOR:  
 4 Q. And then seeing to it that it did in fact  
 5 happen.  
 6 MR. WISEMAN:  
 7 A. Yes.  
 8 MS. CHAYTOR:  
 9 Q. And do you recall any opposition to that?  
 10 MR. WISEMAN:  
 11 A. Not that I recall, no.  
 12 MS. CHAYTOR:  
 13 Q. So no voice of concern about resources that  
 14 would be required in order for that to take  
 15 place, nothing like that?  
 16 MR. WISEMAN:  
 17 A. No. At no time during this whole discussion  
 18 and I questioned about the resource piece as  
 19 we've been talking about, you know, what we  
 20 need to do, should do and what needs to be  
 21 done, at no time has anyone said, you know, is  
 22 this going to cost a lot of money or that we  
 23 don't have the resources to do it. It was  
 24 always a matter of this is something we need  
 25 to do and we're moving on to get it done.

1 MS. CHAYTOR:  
 2 Q. And the discussion involving the decreased, I  
 3 appreciate you can't tell me if it's May 15th  
 4 or May 18th or 19th, but it was sometime in  
 5 the initial few days of you becoming aware of  
 6 this issue or working on this issue?  
 7 MR. WISEMAN:  
 8 A. It would have been, yes.  
 9 MS. CHAYTOR:  
 10 Q. The next bullet I wanted to bring your  
 11 attention to, it says that "Eastern Health did  
 12 not initially advise patients of the  
 13 retesting, despite the department's suggestion  
 14 that it should consider doing so and many  
 15 learned of it then from the media." Did you  
 16 ask any questions around that? And what,  
 17 exactly, were you told?  
 18 MR. WISEMAN:  
 19 A. We did have a discussion around it and the  
 20 understanding that I had was the advice being  
 21 provided to Eastern Health was to not do it  
 22 and that -  
 23 MS. CHAYTOR:  
 24 Q. I'm sorry, to not do?  
 25 MR. WISEMAN:

1 know, information I would have gotten in a  
 2 briefing process. I've since learned that in  
 3 as much as there was a discussion around the  
 4 Ethics Committee being involved, but the  
 5 subcommittee of the Ethics Committee didn't  
 6 get involved until some time in June of '06  
 7 and they were asked a question in and around  
 8 how to disclose information to the families of  
 9 the deceased.  
 10 MS. CHAYTOR:  
 11 Q. That's right.  
 12 MR. WISEMAN:  
 13 A. So the disclosure issue where the Ethics  
 14 Committee was brought into the picture was in  
 15 and around disclosure to the families of the  
 16 deceased. I had interpreted from--in this  
 17 discussion that was taking place, you know, I  
 18 was getting a flavour for who'd been involved  
 19 in this and why the advice and why this and  
 20 why something else and why the actions were  
 21 taken and that was an inaccurate assumption on  
 22 my part that the Ethics Committee was involved  
 23 in the initial phase, but I since understand  
 24 it was just the, you know, the clinical  
 25 people, primarily the oncologists who were

1 A. To not, you know, to do the--not to advise  
 2 patients until after the retesting was done  
 3 and they were given that kind of advice. And  
 4 the -  
 5 MS. CHAYTOR:  
 6 Q. Who did you understand gave Eastern Health  
 7 that advice?  
 8 MR. WISEMAN:  
 9 A. Well as I understood there was a, at the time  
 10 the understanding that I had that there was,  
 11 you know, some clinical people involved, some  
 12 physicians, oncologists particularly, that at  
 13 the time I understood as well that there was a  
 14 subcommittee of a Ethics Committee that had  
 15 gotten involved in providing some advice on  
 16 this issue as well. And actually you asked me  
 17 a similar question in March when we chatted  
 18 and I gathered from your comment and response  
 19 in following that line of questioning that  
 20 there was different information that you had  
 21 available to you, and I indicated at the time  
 22 that anything that I would have shared either  
 23 in the House of Assembly or in any public  
 24 domain at that time about what had happened in  
 25 a process like this, would have come from, you

1 involved in treating the patients who were  
 2 involved in providing this advice.  
 3 MS. CHAYTOR:  
 4 Q. Okay, so Mr. Wiseman, after having your  
 5 interview with counsel, you made inquires on  
 6 that, so I take it up to the point in time  
 7 that you had the interview with us, you were  
 8 still under the -  
 9 MR. WISEMAN:  
 10 A. Still under the assumption -  
 11 MS. CHAYTOR:  
 12 Q. - understanding that they had sought ethical  
 13 advice as to whether or not to disclose to the  
 14 patients.  
 15 MR. WISEMAN:  
 16 A. Generally my, as we're having this discussion,  
 17 keep in mind this is May of '07 and there was  
 18 a May of '06 discussion and there was a  
 19 disclosure by Eastern Health in '06. There  
 20 was an issue first arose in the public domain  
 21 in May of '05, so my discussion last year -  
 22 MS. CHAYTOR:  
 23 Q. The issue first arose in October of '05 in the  
 24 public domain.  
 25 MR. WISEMAN:



Page 257

1 A. Of '05 and then the disclosure to the--by  
 2 Eastern Health in December of '06, now we're  
 3 fast forwarded to May of '07 and so I'm having  
 4 a discussion with, you know, my officials in  
 5 the department, together with the CEO and I'm  
 6 asking questions around, like who's been  
 7 involved with this, what information did you  
 8 get, what advice did you get, and when you're  
 9 talking about taking advice, who are you  
 10 getting it from? And in the context of that  
 11 discussion I was being, you know, a number of  
 12 things were being shared with me, one of them  
 13 was, you know, who's been involved in all of  
 14 this, you know, we've had our lawyers  
 15 involved, we've had the subcommittee, the  
 16 Ethics Committee involved, we've had  
 17 pathologists involved, we've had oncologists  
 18 involved and they're all providing advice to  
 19 us. So that was the kind of context of a  
 20 discussion that we were having. And I  
 21 inferred from that that the Ethics Committee  
 22 was involved at this stage right here that  
 23 we're talking about in '05.  
 24 MS. CHAYTOR:  
 25 Q. Okay, so what I want to understand is that

Page 258

1 when you went into the House, as we'll get to  
 2 in May 15th, '07, you went in there on the  
 3 understanding that they had sought advice from  
 4 a Subcommittee of Ethics, including  
 5 representatives from the community. You  
 6 understood that from your briefing -  
 7 MR. WISEMAN:  
 8 A. Yes, because that's the composition of the  
 9 Ethics Committee.  
 10 MS. CHAYTOR:  
 11 Q. So you're going into the House, the only  
 12 information you have at that point in time is  
 13 this briefing note.  
 14 MR. WISEMAN:  
 15 A. Uh-hm.  
 16 MS. CHAYTOR:  
 17 Q. And there's certainly no indication of a  
 18 Subcommittee of Ethics here and -  
 19 MR. WISEMAN:  
 20 A. And whatever information was gleaned -  
 21 MS. CHAYTOR:  
 22 Q. - whatever was told to you by your officials -  
 23 MR. WISEMAN:  
 24 A. - in an hour and a half, two hour discussion  
 25 that I would have had with officials,

Page 259

1 including Mr. Tilley.  
 2 MS. CHAYTOR:  
 3 Q. Right. Did you take notes?  
 4 MR. WISEMAN:  
 5 A. No.  
 6 MS. CHAYTOR:  
 7 Q. You didn't take any notes during your  
 8 briefing?  
 9 MR. WISEMAN:  
 10 A. I might have made some cryptic notes possibly  
 11 on the side of a briefing note that I would  
 12 have had with me at that time or something  
 13 like that, but I wouldn't have taken detailed  
 14 notes of our discussion.  
 15 MS. CHAYTOR:  
 16 Q. Okay, and this briefing, you're saying took  
 17 place an hour or hour and a half before you're  
 18 headed into the House?  
 19 MR. WISEMAN:  
 20 A. It would have been around that time, yeah.  
 21 MS. CHAYTOR:  
 22 Q. And you've told us who the people were who  
 23 were briefing you. Did you ask during that  
 24 briefing the status of patient notification?  
 25 MR. WISEMAN:

Page 260

1 A. Whether or not I asked or I was told, what I  
 2 went out from that room with, on the  
 3 understanding that the patients were  
 4 contacted--those that had--as their test  
 5 results came back, they were in fact contacted  
 6 and, you know, and I kept being reassured of  
 7 that on that day and in the few days that  
 8 followed. But it became, you know, very  
 9 apparent that not too long after this period  
 10 here, given just anecdotally, listening to the  
 11 news media, you know, commenting upon how  
 12 they've been contacted by individuals who  
 13 said, well, you know, I was one of those  
 14 people and no one has called me yet. And so  
 15 it was very apparent that, you know, there was  
 16 some question around whether or not all these  
 17 individuals who had been actually impacted and  
 18 had their tests redone, actually had been  
 19 contacted, despite being told to the contrary.  
 20 MS. CHAYTOR:  
 21 Q. But on May 15th, what you're told is that--I  
 22 want to be clear, did you ask whether or not  
 23 all patients had already been notified? And  
 24 if so, what were you told?  
 25 MR. WISEMAN:

Page 261

1 A. As I said, I'm not sure if I had to have asked  
 2 the question directly or if it was just shared  
 3 with me voluntarily, but I walked out of the  
 4 room with an understanding that the patients  
 5 had been contacted.  
 6 MS. CHAYTOR:  
 7 Q. Okay, and this bullet here where it says that  
 8 "Eastern Health did not initially advise  
 9 patients of the retesting, despite the  
 10 department's suggestion that it should  
 11 consider doing so and many learned of it from  
 12 the media." Your understanding on that was  
 13 that the department's position had been that  
 14 they should notify the patients -  
 15 MR. WISEMAN:  
 16 A. After the retest.  
 17 MS. CHAYTOR:  
 18 Q. What was the department's position?  
 19 MR. WISEMAN:  
 20 A. The department's position, as I understood it,  
 21 was the department wanted to have a disclosure  
 22 into the individuals affected right away. Now  
 23 when this issue first came to the department's  
 24 attention sometime in July, May and July of  
 25 that year, that they wanted to have it done

Page 262

1 then.  
 2 MS. CHAYTOR:  
 3 Q. So the department had been looking to have the  
 4 patients notified that the retesting process  
 5 was taking place.  
 6 MR. WISEMAN:  
 7 A. Was starting to take place, yes.  
 8 MS. CHAYTOR:  
 9 Q. And Eastern Health did not do that based on  
 10 the advice -  
 11 MR. WISEMAN:  
 12 A. That's right.  
 13 MS. CHAYTOR:  
 14 Q. - of what you understood was a Subcommittee of  
 15 Ethics?  
 16 MR. WISEMAN:  
 17 A. Yes.  
 18 THE COMMISSIONER:  
 19 Q. Have you referred also to the advice of  
 20 clinicians?  
 21 MR. WISEMAN:  
 22 A. Yes.  
 23 THE COMMISSIONER:  
 24 Q. And what part, if any, did that play in any  
 25 decision to disclose? Or what was your

Page 263

1 understanding, I suppose, is the more  
 2 appropriate question.  
 3 MR. WISEMAN:  
 4 A. My understanding, Commissioner, was that the  
 5 advice, the decision to not disclose publicly  
 6 you know, Eastern Health did not choose to do  
 7 it because they had advice from individuals  
 8 who I was describing as being, you know,  
 9 clinical people as well as an Ethics  
 10 Committee. What I--or subcommittee of an  
 11 Ethics Committee. What I now understand is  
 12 that it was only the advice of clinical  
 13 individuals who were providing that advice and  
 14 not the Ethics Subcommittee. And so the  
 15 nature of that advice, I wasn't--I didn't  
 16 delve into the kind of advice that they were  
 17 giving, other than to the extent that it was  
 18 shared with me that they, you know, the advice  
 19 was based on their concern for the patients  
 20 that may not be impacted in any fashion here  
 21 and not wanting to create any alarm or any  
 22 unnecessary stress for those individuals not  
 23 impacted. I didn't--given the fact that this  
 24 had happened in 2005 and now we're into 2007,  
 25 I don't recall spending a whole lot of time

Page 264

1 revisiting the merit of that decision at this  
 2 point. I was more focused on, you know, where  
 3 we are now and I wanted to get my head around  
 4 and understand better the position that we  
 5 were in, as of that moment.  
 6 MS. CHAYTOR:  
 7 Q. And where you understood the issue was as you  
 8 left that meeting, was that all patients had  
 9 been contacted, that the lab had initiated  
 10 measures which would deem it worthy of being  
 11 called Centre of Excellence, is that fair?  
 12 MR. WISEMAN:  
 13 A. Yes, exactly.  
 14 MS. CHAYTOR:  
 15 Q. And what was it that you were being told--I'm  
 16 sure you asked the question of Mr. Tilley,  
 17 what was the explanation as to the numbers not  
 18 all having been released in December 2006?  
 19 MR. WISEMAN:  
 20 A. As I understood it from that conversation, the  
 21 information that they shared in 2006, in  
 22 December of 2006 during that briefing, was  
 23 shared on the basis of legal advice that they  
 24 had had and limited what it is, they shared at  
 25 that moment.

Page 265

1 MS. CHAYTOR:  
 2 Q. And whose legal counsel was it, was it Eastern  
 3 Health's legal counsel?  
 4 MR. WISEMAN:  
 5 A. That would have been Eastern Health, someone  
 6 on behalf--it wasn't someone within the  
 7 Department of Health and Community Services,  
 8 nor was it someone within government, so it  
 9 was somebody, obviously, that they were  
 10 seeking their advice from. Whether it was  
 11 their own lawyer as a corporation or whether  
 12 it was their insurance company's lawyer, you  
 13 know, but it was on legal advice, as I  
 14 understood it.  
 15 MS. CHAYTOR:  
 16 Q. Okay, and he didn't offer if it was the  
 17 lawyers for the insurance company or the  
 18 lawyers for Eastern Health and you didn't ask?  
 19 MR. WISEMAN:  
 20 A. He may have, but my reference was legal advice  
 21 and I don't--I didn't--he may have made that  
 22 distinction, I don't recall it.  
 23 MS. CHAYTOR:  
 24 Q. And did you challenge him on that and ask him  
 25 what difference would it make, why would that

Page 266

1 be the advice?  
 2 MR. WISEMAN:  
 3 A. I mean, as I understood it from the  
 4 conversation, you know, the advice that they  
 5 had was in the context of the, you know, a  
 6 legal action that had already been initiated  
 7 and that, you know, that was their rationale.  
 8 As I might have shared with you, I made a  
 9 comment this morning around, you know, my own  
 10 kind of response to that and theory or query  
 11 as to the rationale, you know, if they're  
 12 going to share something in December--make a  
 13 choice rather in December to withhold some  
 14 information, knowing that within a very short  
 15 period time, a matter of months, you're going  
 16 to be providing all of that detailed  
 17 information as a part of your Statement of  
 18 Defence, which becomes very public, if you  
 19 want to access it, didn't seem to make a whole  
 20 lot of sense at that time and I failed to  
 21 understand the rationale, but that was the  
 22 advice that they were getting and -  
 23 MS. CHAYTOR:  
 24 Q. So you raised that with Mr. Tilley, what was  
 25 his response to that when you pointed out how

Page 267

1 that--you failed to see the rationale in that  
 2 approach?  
 3 MR. WISEMAN:  
 4 A. This was, I mean, we didn't get into a lengthy  
 5 debate about the pros and cons and he was  
 6 telling me what they did and why they did it  
 7 and I was expressing an opinion, you know, it  
 8 had been done and I had a different view than  
 9 obviously his legal opinion had and we just  
 10 moved on to continue the discussion.  
 11 MS. CHAYTOR:  
 12 Q. So he offered no response to -  
 13 MR. WISEMAN:  
 14 A. I don't recall, you know, bringing that debate  
 15 to any kind of conclusion or resolution about  
 16 who was right or wrong. It was, you know, he  
 17 was providing a response as to why and I was  
 18 making a comment about my opinion and so it  
 19 was -  
 20 MS. CHAYTOR:  
 21 Q. And your opinion being well, if the numbers  
 22 are going to come out in a matter of weeks,  
 23 why not put them all out there in the  
 24 beginning. But did you also have an opinion  
 25 about why not to disclose the numbers in the

Page 268

1 first place?  
 2 MR. WISEMAN:  
 3 A. There's two parts to that. There's, one  
 4 obviously goes back to my earlier comment I  
 5 made to you this morning, I'll reiterate it  
 6 this afternoon is that there is, in my opinion  
 7 as the Minister of Health and Community  
 8 Services, there is no rationale at all that I  
 9 would use or have and to withhold information  
 10 or to not disclose information because there's  
 11 some legal proceeding ongoing, that's a  
 12 separate issue. My comment around not having,  
 13 the argument, I guess my point being with the  
 14 debate around the disclosure is there was no  
 15 real sound logic to the argument being  
 16 presented, as I thought by legal counsel, if  
 17 you're going to tell your client not to  
 18 disclose the information today because, you  
 19 know, there's a legal proceeding, knowing that  
 20 you're going to do it tomorrow, that, in and  
 21 of itself, didn't make any sense. Forgetting  
 22 for the moment about the whole issue around  
 23 disclosure because that's, I already stated my  
 24 position on that very clearly, but just on the  
 25 merit of the advice being given is what I'm

Page 269

1 making a comment on now.  
 2 MS. CHAYTOR:  
 3 Q. Right, so in terms of the whole issue of not  
 4 disclosing the number in the first place, you  
 5 raised that with Mr. Tilley. Apart from any  
 6 issue that it does ultimately come out and  
 7 it's in public documents, as you say within a  
 8 matter of a couple of months, you raised with  
 9 him, though, the whole approach of not being  
 10 forthright or giving all the numbers in the  
 11 first place.  
 12 MR. WISEMAN:  
 13 A. And I've been very clear on the public record  
 14 and I'll repeat it here again today, you know,  
 15 the issue around disclosure I've said publicly  
 16 that the information in 2005, you know, I  
 17 agree with my predecessor that that  
 18 information should have been disclosed in  
 19 2005. The notion that there not be full  
 20 disclosure in 2005, I didn't agree with that,  
 21 that call. And the notion of, you know, what  
 22 was to happen in December 2006 was just  
 23 compounding an issue that had already been  
 24 inappropriately decided upon.  
 25 MS. CHAYTOR:

Page 270

1 Q. Did you ask Mr. Tilley for the numbers?  
 2 MR. WISEMAN:  
 3 A. The numbers?  
 4 MS. CHAYTOR:  
 5 Q. In the briefing.  
 6 MR. WISEMAN:  
 7 A. Real numbers?  
 8 MS. CHAYTOR:  
 9 Q. Yes.  
 10 MR. WISEMAN:  
 11 A. Yes, because he shared with me in that  
 12 discussion what the differences were.  
 13 MS. CHAYTOR:  
 14 Q. And so you went into the House then with the  
 15 full numbers.  
 16 MR. WISEMAN:  
 17 A. Number of what was -  
 18 MS. CHAYTOR:  
 19 Q. The change result number.  
 20 MR. WISEMAN:  
 21 A. Yes.  
 22 MS. CHAYTOR:  
 23 Q. Okay, so you asked him for those number in the  
 24 briefing and took those numbers with you into  
 25 the House?

Page 271

1 MR. WISEMAN:  
 2 A. Because the nature of the discussion that we  
 3 had had that day was the difference in the  
 4 information.  
 5 MS. CHAYTOR:  
 6 Q. Yes. And so you then got all of the  
 7 information because it's not in the briefing  
 8 note that you would have went into the house  
 9 with, so you received full complete numbers  
 10 from Mr. Tilley and took those numbers into  
 11 the House with you that day?  
 12 MR. WISEMAN:  
 13 A. As I recall it, yes. I would have gotten the  
 14 information that he would have shared in the--  
 15 because there's one figure in the difference,  
 16 I think the difference was he was reporting on  
 17 those that had changes, rather than those that  
 18 had deceased.  
 19 MS. CHAYTOR:  
 20 Q. Yes.  
 21 MR. WISEMAN:  
 22 A. The total number redone, rather, I'm sorry.  
 23 MS. CHAYTOR:  
 24 Q. So I appreciate that it was about an hour--how  
 25 long was this meeting, about an hour or less?

Page 272

1 MR. WISEMAN:  
 2 A. Probably, you know, an hour, little better  
 3 than an hour. House of Assembly opens at 30  
 4 and I tend to leave to go over about quarter  
 5 past one or so, little better than that and I  
 6 had a committee meeting earlier in the  
 7 morning, so it's probably closer to 12: 00  
 8 before I got back to my office and so it would  
 9 have been an hour to an hour and a half.  
 10 MS. CHAYTOR:  
 11 Q. And was there further discussion then with  
 12 your officials after the meeting broke with  
 13 Mr. Tilley?  
 14 MR. WISEMAN:  
 15 A. I don't recall it, I would think though, just  
 16 given the timeframe here, I wouldn't have had  
 17 a lot of time to, you know, conclude a meeting  
 18 that involved Mr. Tilley and then have another  
 19 one with officials given the time restraint  
 20 that I had in getting to the House of  
 21 Assembly.  
 22 MS. CHAYTOR:  
 23 Q. Okay, and is there anything else in the  
 24 briefing that I haven't covered with you? Any  
 25 other information that came out of the

Page 273

1 briefing that I haven't covered with you?  
 2 MR. WISEMAN:  
 3 A. Not that I can see here now, no.  
 4 MS. CHAYTOR:  
 5 Q. And so you had about an hour or a little bit  
 6 better than an hour meeting for an oral  
 7 briefing, you had your briefing note then of  
 8 April 19th, 2007. How did you feel at the  
 9 conclusion of that? Did you feel that you're  
 10 up to speed now on this issue? Did you feel  
 11 that you're well informed, prepared to go into  
 12 the House?  
 13 MR. WISEMAN:  
 14 A. Well, you know, this is--I wasn't as well  
 15 prepared as I--or as prepared as I would want  
 16 to have been. This is a, you know, as I found  
 17 out in a very short discussion, this was a  
 18 major issue in our health system. It was an  
 19 issue that had a big impact on a large number  
 20 of people and some, what I thought, you know,  
 21 decisions that I believed at the time that,  
 22 you know, what I was hearing in this very  
 23 short period of time, we obviously had an  
 24 issue around disclosure in 2005 that I already  
 25 had made up my own mind was inappropriate or

Page 274

1 inappropriately handled.  
 2 MS. CHAYTOR:  
 3 Q. I'm sorry, in 2005?  
 4 MR. WISEMAN:  
 5 A. In that short briefing, you're asking me a  
 6 question around in terms of how I felt.  
 7 MS. CHAYTOR:  
 8 Q. Yes.  
 9 MR. WISEMAN:  
 10 A. I mean, obviously, as I said, you know, there  
 11 were a number of things that created some  
 12 anxiety for me. There had been some, in  
 13 addition to the amount of information that was  
 14 centered around this, I knew that in that  
 15 short period of time I hadn't gotten the full  
 16 picture, couldn't have and -  
 17 MS. CHAYTOR:  
 18 Q. So you also disagreed with how the disclosure  
 19 was handled back in the summer of 2005?  
 20 MR. WISEMAN:  
 21 A. I think it would be more appropriate to have  
 22 made a much more upfront fuller disclosure to  
 23 all the patients who were impacted, rather  
 24 than wait until the test results were coming  
 25 back. I think it was appropriate that when

Page 275

1 Eastern Health realized, you know, the  
 2 magnitude of the issue and the number of  
 3 people to be impacted, the significance of it,  
 4 that it would have been much more appropriate  
 5 to have disclosed that in 2005.  
 6 MS. CHAYTOR:  
 7 Q. And you formed that opinion while, after being  
 8 briefed on May 15th?  
 9 MR. WISEMAN:  
 10 A. Yes, well I mean the issue for me is, you  
 11 know, my own personal belief is that the  
 12 earlier disclosure is what's appropriate and  
 13 so, you know, whether--it wasn't the briefing  
 14 that made me have that, that wasn't a  
 15 reflection of my thinking as a result of a  
 16 briefing, that's a reflection of my thinking  
 17 as a Minister.  
 18 MS. CHAYTOR:  
 19 Q. Okay, and so my question to you was your  
 20 comfort level now in being able to go into the  
 21 House of Assembly and address this issue on  
 22 May 15th, how did you feel? Did you feel you  
 23 had a good grasp on this issue? You indicated  
 24 it was a significant issue, obviously, had  
 25 impacted a large number of Newfoundlanders and

Page 276

1 Labradorians.  
 2 MR. WISEMAN:  
 3 A. What I went into the House with was some  
 4 knowledge but I recognize fully that this was  
 5 a, you know, a much--there was much more to  
 6 this and much more I needed to understand  
 7 about this issue to be able to speak to it  
 8 with a high degree of confidence with a lot of  
 9 detail, I needed to have a lot more insight  
 10 than I had going into the House that day.  
 11 What I had was a very top of the trees  
 12 overview of, you know, how many people were  
 13 affected and what, you know, why we should be  
 14 continuing on with the tests that they're  
 15 doing now, you know, and what comfort should  
 16 people have in making sure that what's  
 17 happening there now is appropriate and, you  
 18 know, fundamentally some chronology of what  
 19 has taken place from the very beginning in  
 20 2005 up until now and some of the timeframes  
 21 involved in the numbers of people to be  
 22 retested, and some information around--and I  
 23 took some confidence in what I was being told  
 24 with respect to people being contacted and so  
 25 I went in with that kind of information.

Page 277

1 MS. CHAYTOR:  
 2 Q. Your understanding being that all patients had  
 3 been contacted.  
 4 MR. WISEMAN:  
 5 A. Yes.  
 6 MS. CHAYTOR:  
 7 Q. And you understood that to mean all patients  
 8 had been contacted with their retest results?  
 9 MR. WISEMAN:  
 10 A. Yes.  
 11 MS. CHAYTOR:  
 12 Q. And did you appreciate going into the House  
 13 that day that you were, if the question came  
 14 up, you would be the first Minister to speak  
 15 on this issue? It hadn't come up from  
 16 Minister Ottenheimer, it hadn't come up from  
 17 Minister Osborne, did you understand that?  
 18 MR. WISEMAN:  
 19 A. I hadn't reflected on it in that fashion, you  
 20 know, as a Minister, you expect in the House  
 21 of Assembly, you know, it's a public forum,  
 22 the opposition and others will ask questions  
 23 and as the person who speaks on behalf of the  
 24 Department of Health and Community Services,  
 25 you'd expect the question most any time from

Page 278

1 the media, for example, on an issue, so you  
 2 know whenever you--inherent in the position is  
 3 the fact that you're speaking on behalf of the  
 4 department, so you'd tend not to think about  
 5 whether you're the first or the second or, you  
 6 know, whether or not this issue has been  
 7 addressed before, I mean, preparation for the  
 8 House was, you know, a pretty intense  
 9 discussion around this issue. And leading up  
 10 to just moments before I left to walk over, to  
 11 the period of time from walking from one  
 12 building to the next, you know, was much more  
 13 reflecting on the information that I had just  
 14 gathered.  
 15 MS. CHAYTOR:  
 16 Q. Yes, but to your knowledge it hadn't come up  
 17 in the House before.  
 18 MR. WISEMAN:  
 19 A. To my knowledge.  
 20 MS. CHAYTOR:  
 21 Q. You were aware of that.  
 22 MR. WISEMAN:  
 23 A. I hadn't reflected on it, but I mean, I knew  
 24 that -  
 25 MS. CHAYTOR:

Page 279

1 Q. Are you now aware of that?  
 2 MR. WISEMAN:  
 3 A. Yes, I mean it wasn't a preoccupation of mine  
 4 as I was preparing for the House -  
 5 MS. CHAYTOR:  
 6 Q. I didn't ask whether it was, I'm just  
 7 wondering if you were aware of it. And so no  
 8 member of the government--you're the first  
 9 member of the government to speak publicly on  
 10 this issue?  
 11 MR. WISEMAN:  
 12 A. As I understand it.  
 13 MS. CHAYTOR:  
 14 Q. As you understand it, yes.  
 15 THE COMMISSIONER:  
 16 Q. Ms. Chaytor, wherever there's a convenient  
 17 place, I'm not suggesting it has to be now,  
 18 but sometime in the next five minutes?  
 19 MS. CHAYTOR:  
 20 Q. Okay, sure, thank you. So this was the first  
 21 time then, Minister, that the people of  
 22 Newfoundland and Labrador, including the  
 23 patients, when you go into the House that day  
 24 and the issue comes up and you speak to it,  
 25 it's the first time that the people have heard

Page 280

1 from a member of the government on this issue?  
 2 MR. WISEMAN:  
 3 A. It is.  
 4 MS. CHAYTOR:  
 5 Q. That's correct, okay. This is a good place  
 6 then.  
 7 THE COMMISSIONER:  
 8 Q. All right, take fifteen minutes. Thank you.  
 9 (RECESS)  
 10 THE COMMISSIONER:  
 11 Q. Please be seated. Ms. Chaytor?  
 12 MS. CHAYTOR:  
 13 Q. Thank you, Commissioner. Now, Mr. Wiseman,  
 14 there was an issue that I asked if you could  
 15 check on regarding whether or not the  
 16 pathology stipend was included in the budget  
 17 for--your first budget that you were involved  
 18 in preparing. And I understand you've checked  
 19 into that and you have the answer to the  
 20 question.  
 21 MR. WISEMAN:  
 22 A. Yes, when I checked, it wasn't as I indicated  
 23 this morning, it wasn't necessarily, even  
 24 though it was anticipated to be coming out of  
 25 last year's budget, it wasn't entered as a

Page 281

1 line item in the budget process, but thought  
 2 to be covered off as a part of the physician  
 3 compensation budget in which there was  
 4 adequate money there to be able to do that, so  
 5 it wasn't necessary to ask for a special  
 6 request of increased funding to cover it off  
 7 in last year's budget.  
 8 MS. CHAYTOR:  
 9 Q. Okay, so it wasn't an actual lined item in the  
 10 budget?  
 11 MR. WISEMAN:  
 12 A. No.  
 13 MS. CHAYTOR:  
 14 Q. Okay, thank you.  
 15 MR. WISEMAN:  
 16 A. But there was money there to cover it off.  
 17 MS. CHAYTOR:  
 18 Q. Right, thank you. And that funding came from  
 19 where? Where in the budget would that funding  
 20 have come from?  
 21 MR. WISEMAN:  
 22 A. That would have been a part of the physician  
 23 compensation budget.  
 24 MS. CHAYTOR:  
 25 Q. So there was excess money within the physician

Page 282

1 compensation aspect of the budget?  
 2 MR. WISEMAN:  
 3 A. What would happen in that particular piece of  
 4 the budget, there'd be a block of money that  
 5 would be allocated to cover off physicians'  
 6 salaries and within that there's a, the dollar  
 7 amounts are such that we would have envisaged  
 8 being able to absorb it in the already  
 9 allocated money in our department's base, so  
 10 therefore, there was no need to ask for an  
 11 additional allowance to cover off what might  
 12 have been paid out as a result of a stipend to  
 13 be paid to pathologists. So we already had  
 14 enough money--the budgetary process is one  
 15 where you, the department has a base budget,  
 16 so there is a base already established for  
 17 physician compensation. So when we go forward  
 18 in the budget process, if we anticipate  
 19 needing more than what's already in the base,  
 20 because we had the base already secured, if we  
 21 need more than what's in the base, that's what  
 22 we ask for in the budget process. So in this  
 23 particular case, we recognized that there was  
 24 enough money already in the base to  
 25 accommodate, you know, increased costs in the

Page 283

1 year coming to cover off that pathology  
 2 stipend.  
 3 MS. CHAYTOR:  
 4 Q. Right, so it was in the mind of the officials  
 5 that this was an issue?  
 6 MR. WISEMAN:  
 7 A. Very much so.  
 8 MS. CHAYTOR:  
 9 Q. And an assessment was done to determine that  
 10 there was enough money -  
 11 MR. WISEMAN:  
 12 A. Yes.  
 13 MS. CHAYTOR:  
 14 Q. - available to address that without it having  
 15 to be a lined item in the budget?  
 16 MR. WISEMAN:  
 17 A. Exactly. It's a good summary of it, actually.  
 18 MS. CHAYTOR:  
 19 Q. Okay. Mr. Wiseman, thank you for checking  
 20 into that. So you headed into the House on  
 21 May 15th, 2007 and did this issue, the ER/PR  
 22 issue, did that come up in the House that day?  
 23 MR. WISEMAN:  
 24 A. It did.  
 25 MS. CHAYTOR:

Page 284

1 Q. And tell us how it went?  
 2 MR. WISEMAN:  
 3 A. There were three or four questions with  
 4 respect to that from the opposition and I  
 5 responded to them. And as I said, as we were  
 6 closing up before the break, you know, there  
 7 was a lot of information to try to absorb  
 8 going into the House that I had gotten in that  
 9 very short period of time, and that the, you  
 10 know, the process now was to try to--I mean, I  
 11 obviously needed to respond to the questions  
 12 in the house based on the information that I  
 13 had just gotten and, but recognized as I was  
 14 doing that, that there was, we needed to have  
 15 many more discussions in and around, you know,  
 16 what I didn't know and greater insights I  
 17 needed to glean.  
 18 MS. CHAYTOR:  
 19 Q. Okay, and did you express that? Did you say  
 20 that in the House that day that, you know,  
 21 this is an issue that you're just becoming  
 22 familiar with? Was that kind of reservation  
 23 expressed?  
 24 MR. WISEMAN:  
 25 A. No, I didn't share that, no.

Page 285

1 MS. CHAYTOR:  
 2 Q. Perhaps we can have P-0105, please? Page one.  
 3 Mr. Wiseman this is an excerpt from Hansard,  
 4 May 15th, 2007 and there's a couple of things  
 5 in here that I would like to bring to your  
 6 attention. And here we'll see that you're  
 7 being asked questions by Mr. Ball and your  
 8 responses on the issue.  
 9 MR. WISEMAN:  
 10 A. Uh-hm.  
 11 MS. CHAYTOR:  
 12 Q. And if we come down to the middle of the  
 13 paragraph, I guess we should look at what Mr.  
 14 Ball is asking of you, he's asking "Has the  
 15 department carried out any independent  
 16 inquiries and investigations into this  
 17 shocking matter from a departmental level or  
 18 external inquiries from the findings already  
 19 uncovered by the Eastern Health Authority, if  
 20 so, is the Minister prepared to release those  
 21 results?" And he's talking about the alarming  
 22 news that has just come to light in recent  
 23 years about the false testing results. So if  
 24 you can just read down through, that's what  
 25 the question was. And then in answer to that,

Page 286

1 you go on and talk about the bigger picture  
 2 that has been raised. "With respect to the  
 3 future and with respect to an investigational  
 4 analysis, there was a complete review done of  
 5 that program and service. What has happened  
 6 at the time that service, a halt was put in  
 7 place. No further tests were done until very  
 8 recently, that area has now reopened, we now  
 9 have a dedicated lab of dedicated  
 10 technologists, dedicated pathologists, a  
 11 Centre of Excellence"--so there's that term--"  
 12 with pathologists and oncologists providing  
 13 that support to that particular program. We  
 14 now have a quality assurance program in place  
 15 that ensures there is ongoing monitoring  
 16 program to ensure that that does not happen  
 17 again in the future." Mr. Wiseman, the term  
 18 "Centre of Excellence" I raised with you  
 19 before, are you aware of whether or not that  
 20 term has been used by any external body or  
 21 person, external to Eastern Health, to  
 22 describe the laboratory services at Eastern  
 23 Health?  
 24 MR. WISEMAN:  
 25 A. I haven't seen it, I'm not aware.

Page 287

1 MS. CHAYTOR:  
 2 Q. Okay. And then you go on to say, "We have put  
 3 in place some really strong, I say, Mr.  
 4 Speaker, some very stringent and some very  
 5 strong requirements to ensure quality, some  
 6 additional training for the technologists and  
 7 the pathologists working in that area and  
 8 pooled the resources we have in the province  
 9 in the creation of the Centre of Excellence,  
 10 so on a go-forward basis, the women of  
 11 Newfoundland and Labrador can be assured"--and  
 12 then I believe you're cut off at that point.  
 13 So again, my question to you, Mr. Wiseman,  
 14 would be you're sounding confident, you're  
 15 sounding very confident in your answer that's  
 16 given in terms of what's now in place at the  
 17 lab or what's in place on May 15th, 2007.  
 18 Sounds very confident in asserting that it's a  
 19 Centre of Excellence and people should be  
 20 reassured what we have in place now is of  
 21 extremely high quality. Is that a fair  
 22 assessment of what you're conveying?  
 23 MR. WISEMAN:  
 24 A. You would read that in my comment, yes.  
 25 MS. CHAYTOR:

Page 288

1 Q. If we continue on then in terms of the, page 3  
 2 of this document, go back the page before to  
 3 get what the question was. Mr. Ball is still  
 4 asking the questions and he says, "I was  
 5 actually more concerned about when the women  
 6 were notified about this problem. While this  
 7 problem may extend beyond our own boundaries,  
 8 women in our province are gravely affected by  
 9 the very serious error in testing. In fact,  
 10 the 307 women whom the Minister spoke about in  
 11 our province were provided with the wrong  
 12 results and 104 of those now require different  
 13 treatment. I ask the Minister has the  
 14 equipment used to test the hormone receptor  
 15 been replaced? If not, is it tested on a  
 16 regular basis to ensure the results now  
 17 provided are accurate and are trustworthy so  
 18 that public confidence is restored in our  
 19 health care system." And then your response  
 20 to that is, "I think, Mr. Speaker, if the  
 21 member will refer to the first answer I gave  
 22 him in terms of the response and what has  
 23 happened since then, I have given the member  
 24 here and I give the people of Newfoundland and  
 25 Labrador a reassurance that new protocols are



Page 289

1 in fact in place. We do have a new quality  
 2 assurance program. We do have a dedicated lab  
 3 dealing with this issue, these tests, we do  
 4 have a Centre of Excellence created where we  
 5 pooled the expertise we have in pathology and  
 6 oncology and the technologists who work in the  
 7 labs have come together to create that pool of  
 8 resources that we need to truly call ourselves  
 9 as having a Centre of Excellence to deal with  
 10 breast cancer testing in this province. We  
 11 want to provide some comfort to the women of  
 12 Newfoundland and Labrador that the tests that  
 13 they are getting done today have been  
 14 subjected to a very rigorous quality assurance  
 15 program. They should be assured that what  
 16 happened last year, what happened over a  
 17 period of about five years should not repeat  
 18 itself in Newfoundland and Labrador again."  
 19 And Mr. Wiseman, you indicate "we do have a  
 20 new quality assurance program" and you speak  
 21 quite strongly on that. What did you  
 22 understand the new quality assurance program  
 23 was?  
 24 MR. WISEMAN:  
 25 A. As I said to you earlier, I didn't get into a

Page 290

1 great deal of depth about the components of  
 2 the quality insurance program. One of the  
 3 pieces I did understand from the discussion  
 4 was the pieces around the sending out the test  
 5 results at Eastern Health or re-examination  
 6 outside to validate the reporting that was  
 7 being done from the lab here, that was one  
 8 piece of it that I understood.  
 9 MS. CHAYTOR:  
 10 Q. But you didn't know whether or not that had  
 11 actually received any results back yet on  
 12 that?  
 13 MR. WISEMAN:  
 14 A. I wasn't aware, no.  
 15 MS. CHAYTOR:  
 16 Q. Okay, I'm sorry, I didn't mean to cut you off,  
 17 was there something else?  
 18 MR. WISEMAN:  
 19 A. No, no.  
 20 MS. CHAYTOR:  
 21 Q. Okay. How do you feel about those comments  
 22 now, knowing what information you had at the  
 23 time going into the House and making those  
 24 assertions?  
 25 MR. WISEMAN:

Page 291

1 A. Well again, just repeat what I said a moment  
 2 ago with respect to a discussion that we just  
 3 referred to in the briefing note of May 15th  
 4 and the discussion that I had, you know, what  
 5 I'm sharing here in the House of Assembly is  
 6 based on the information that I gleaned from  
 7 the briefing that I just had with officials  
 8 who, you know, we talked about the new  
 9 initiatives that we had, they had put in place  
 10 and it included, as I referenced here in the  
 11 House, a quality assurance program, the issue  
 12 around the human resources are there, the  
 13 thing that I did reference in response to part  
 14 of the question with respect to review that  
 15 had taken place, I didn't talk about or use  
 16 the phrase here "external review" but there  
 17 had been this review had taken place by an  
 18 outside agency, outside individuals who came  
 19 in to do an evaluation of that area of the lab  
 20 and made a series of recommendations that had  
 21 been implemented. So it's on the strength of  
 22 -  
 23 MS. CHAYTOR:  
 24 Q. To your knowledge that -  
 25 MR. WISEMAN:

Page 292

1 A. Yes, on the strength of that information that  
 2 was shared with me, I made those statements in  
 3 the House.  
 4 MS. CHAYTOR:  
 5 Q. Okay, and sitting here today in terms of  
 6 making those statements, how do you feel about  
 7 the comments?  
 8 MR. WISEMAN:  
 9 A. I mean, right now today, you know, I have the  
 10 benefit, I guess, of sitting here now in April  
 11 of 2008 and able to share with you that, you  
 12 know, since this time and last year, Eastern  
 13 Health has had a accreditation review by the  
 14 National Body for Health Service Accreditation  
 15 who've reviewed, not only the lab, but all of  
 16 their operation. There was a series of  
 17 recommendations for the laboratory, but again,  
 18 you know, they're recommendations that would  
 19 not suggest that, you know, this area of the  
 20 lab is in any kind of danger or there's some  
 21 problems with the reporting. There is another  
 22 evaluation that was done in December of 2007  
 23 and if you might just allow me to, I think  
 24 it's in one of the exhibits that you might  
 25 have here as well, of a report by Quality

Page 293

1 Management Program Laboratory Services, dated  
 2 December 7th of 2007 and just to pull out a  
 3 summation for you, "The laboratory is  
 4 functioning at a comparable level to similar  
 5 labs in Ontario." The report goes on to say  
 6 that IHC laboratory is producing good results  
 7 which would be interpretable anywhere and the  
 8 administration should be confident at this  
 9 time the IHC laboratory is operating at a high  
 10 quality control ER/PR program." So I guess I  
 11 had the benefit of having that today, as I sit  
 12 here, which builds on the -  
 13 MS. CHAYTOR:  
 14 Q. And we're going to come to that report and  
 15 I'll ask you some questions about the  
 16 accreditation, as well.  
 17 MR. WISEMAN:  
 18 A. Which builds on what I had said last year, so  
 19 I do have, I guess, the benefit of this time  
 20 lapse between then and now.  
 21 MS. CHAYTOR:  
 22 Q. And, of course, those things happening, well  
 23 in respect of the QMPLS report happening in  
 24 December of '07 and whether or not any further  
 25 improvements took place and whether or not

Page 294

1 there are other limitations indicated as well  
 2 in that report and we'll come to that.  
 3 MR. WISEMAN:  
 4 A. Sure.  
 5 MS. CHAYTOR:  
 6 Q. And as well, of course, the accreditation  
 7 happening even more recently. But in terms of  
 8 what was said with the knowledge that you on  
 9 May 15th, 2007, what was said at that point in  
 10 time, in terms of the knowledge that you had  
 11 about the state of affairs in the lab and what  
 12 you had been told about the situation, how do  
 13 you feel about the comments that you said on  
 14 that particular date?  
 15 MR. WISEMAN:  
 16 A. In as much as I said earlier, you know, that I  
 17 had some concerns around the decisions that  
 18 were made about the disclosure piece, you  
 19 know, what I heard in that discussion around  
 20 the improvements that had been made and the  
 21 initiatives they had undertaken to make sure  
 22 that they were prepared to reopen the lab and  
 23 provide quality retesting, that piece of the  
 24 conversation I took some comfort in and gave  
 25 me the comfort of going into the House and

Page 295

1 making these statements.  
 2 MS. CHAYTOR:  
 3 Q. Okay. We continue on then with the same  
 4 exhibit, and page five of the exhibit, and  
 5 again if we just go back so you can see what  
 6 the question was that was posed to you, and  
 7 this is coming from Ms. Michael and she says,  
 8 "Minister, with regard to the quality control  
 9 that you are telling us about, what has been  
 10 put in place to ensure that this kind of lack  
 11 of direct information to a patient is never  
 12 going to happen again", and I should back up,  
 13 the paragraph before that to put it in  
 14 context, "Many of the women who were affected  
 15 by the poor testing that went on did not  
 16 receive direct contact from Eastern Health,  
 17 but learned about it through the media. Women  
 18 of this province and their families really  
 19 deserve to know personally what had happened",  
 20 and then she says, "With regard to the quality  
 21 control you're talking about, what's been put  
 22 in place to ensure that this kind of lack of  
 23 direct information to a patient never happens  
 24 again", and your response to that is, "Test  
 25 results -- the member is talking about a

Page 296

1 change. Test results always have been  
 2 communicated to patients. I think the  
 3 difficulty in this particular instance here  
 4 was that there were a number of tests that  
 5 were done and the tests were inaccurate. What  
 6 has happened here when that was discovered,  
 7 the tests were completed again, and the new  
 8 results were communicated directly to each of  
 9 the patients. As I understand it, Eastern  
 10 Health had direct contact with either the  
 11 patient themselves, and in some cases it was  
 12 through the family physician, but the  
 13 information did get communicated to the  
 14 patient. The unfortunate thing about it was  
 15 many patients heard about the retesting  
 16 process as you have described through the  
 17 media rather than having it come directly from  
 18 Eastern Health themselves". Now, Mr. Wiseman,  
 19 I appreciate earlier in your evidence you  
 20 spoke about anecdotally people coming forward  
 21 and saying I didn't receive my results or I  
 22 wasn't contacted, and knowing what you know  
 23 now regarding this issue, is there anything  
 24 you'd like to say about that answer that you  
 25 gave on May 15th?

Page 297

1 MR. WISEMAN:  
 2 A. The answer I gave then was a reflection of the  
 3 briefing that I had with -- earlier that day  
 4 that we just spoke about a few moments ago.  
 5 What I now know, and know more accurately, or  
 6 as recent as in February of this year when we  
 7 provided an update on the piece of information  
 8 being done by the Centre for Health  
 9 Information in reconciling the numbers of  
 10 people who had been impacted by this, that the  
 11 information supplied by Eastern Health in that  
 12 briefing, both to me that day and to  
 13 Department officials prior to that, and to my  
 14 predecessors around the manner in which people  
 15 were contacted, and the fact that people were  
 16 contacted, all we now know is that did not  
 17 happen. We now know that people were not  
 18 contacted. We now know that as of that date,  
 19 not all people who were impacted had their  
 20 test results -- had their tests done during  
 21 that period of 1997, had not all been  
 22 retested.  
 23 MS. CHAYTOR:  
 24 Q. In fact, there's even some identified after  
 25 you were saying this in the House?

Page 298

1 MR. WISEMAN:  
 2 A. Exactly. We did an update in November, I  
 3 think it was, November 2nd -- I'm trying to  
 4 get now the sequence of establishing the  
 5 Commission, but also establishing a task force  
 6 looking at adverse events, but also as a part  
 7 of that process to reconcile some of the  
 8 things we're talking about here. We now  
 9 understand as a result of a piece of work done  
 10 for us that there was fifteen people who had  
 11 their tests done during that period who didn't  
 12 get the retest done, that were only done as  
 13 recent as the latter part of 2007.  
 14 MS. CHAYTOR:  
 15 Q. Yes, and we'll talk about that.  
 16 MR. WISEMAN:  
 17 A. And we also now know that there were some 44  
 18 people, nine of whom have since died,  
 19 unfortunately, there were some 44 people who  
 20 were never contacted or we have no record of  
 21 them ever being contacted, and so there's --  
 22 and there's a few others that are still -that  
 23 had some initial contact made with them and  
 24 said we're sending your results out, but no  
 25 follow up was done to say we've got them back

Page 299

1 and here's what happened. So we now know, as  
 2 a result of a piece of work that we initiated  
 3 last year in June, that that information that  
 4 was supplied during last year by Eastern was  
 5 inaccurate and was not complete, and I  
 6 repeated it in the House of Assembly based on  
 7 -- and on the strength of what was shared with  
 8 me as being fact.  
 9 MS. CHAYTOR:  
 10 Q. And then you repeated it after this date?  
 11 MR. WISEMAN:  
 12 A. And I repeated it after this date many times,  
 13 because I was being assured that, in fact, it  
 14 was done, but we now know that what I shared  
 15 in good faith based on briefing in the House,  
 16 has turned out to be inaccurate.  
 17 MS. CHAYTOR:  
 18 Q. Mr. Wiseman, when you're repeating it, as you  
 19 say, on several occasions in the House  
 20 afterwards, at that point in time had you  
 21 heard about the patients who were saying,  
 22 well, that's not the case, I haven't been  
 23 contacted? When did you learn that there were  
 24 people speaking out and saying that I have not  
 25 been contacted?

Page 300

1 MR. WISEMAN:  
 2 A. I mean, over the course of, you know, I guess  
 3 when this -- this was again very much talked  
 4 about from the middle of May to maybe the  
 5 first part of June sometime last year. It was  
 6 a two or three week period there was intense  
 7 public discussion around this issue, and then  
 8 periodically I'd hear a story about a person  
 9 who said I haven't heard anything yet. We had  
 10 some queries to the office from individuals  
 11 who were able to identify themselves, and  
 12 said, you know, I haven't been called yet.  
 13 MS. CHAYTOR:  
 14 Q. And what would you do when you received that  
 15 information?  
 16 MR. WISEMAN:  
 17 A. When we received that kind of call, we were  
 18 able to identify the person, we were able to  
 19 track it back, and there were a couple of  
 20 incidents where we had it tracked and contact  
 21 was made by them. We started to become aware  
 22 of those kind of comments that were being  
 23 made, and that's one of the things that --  
 24 when we put together this task force that I  
 25 referenced earlier, one of the things we asked

Page 301

1 them to do was to start -- we needed to fully  
 2 understand. Not to look at the cause of what  
 3 might have happened here, but we need to  
 4 understand who it is we're talking about. We  
 5 started out talking about 900 and some odd, we  
 6 started talking about 2000 and some odd tests,  
 7 what we really need to reconcile is who is  
 8 impacted by this. So that's why we put  
 9 together some people from the Centre for  
 10 Health Information who have certain expertise  
 11 in database management and information  
 12 management --  
 13 MS. CHAYTOR:  
 14 Q. That's the task force led by Robert Thompson?  
 15 MR. WISEMAN:  
 16 A. Yes, that's a piece of work that they were  
 17 doing to actually go back through all of the  
 18 sources of information and start to identify  
 19 clearly who was impacted, who had tests done  
 20 during that period, what were the results,  
 21 were they retested, and did that get  
 22 communicated and when. So that whole  
 23 reconciliation process has actually --  
 24 MS. CHAYTOR:  
 25 Q. Yes, and that's been quite a time consuming

Page 302

1 piece of work.  
 2 MR. WISEMAN:  
 3 A. It has been.  
 4 MS. CHAYTOR:  
 5 Q. And it's going on, but I'm just wondering,  
 6 you're hearing in the meantime individuals  
 7 saying that it's not accurate, I haven't been  
 8 contacted, you know, on those issues and some  
 9 are phoning your Department directly, and I'm  
 10 just wondering did you go back to Eastern  
 11 Health, did you go back to your officials, did  
 12 you say how can this be?  
 13 MR. WISEMAN:  
 14 A. We did, yes.  
 15 MS. CHAYTOR:  
 16 Q. And what was the answer you were provided?  
 17 MR. WISEMAN:  
 18 A. I kept getting the reassurances that, in fact,  
 19 patients had been contacted.  
 20 MS. CHAYTOR:  
 21 Q. So then you kept repeating that in the House?  
 22 MR. WISEMAN:  
 23 A. I kept repeating it. I mean, I was -- some of  
 24 the names of individuals who -- one of the  
 25 things that we found was the public discussion

Page 303

1 around this, there were many people who were  
 2 inquiring was I one of them. So some of the  
 3 calls we received from individuals were  
 4 identifying themselves and saying was I one of  
 5 these people impacted and we'd pass the  
 6 information on to Eastern Health, and there  
 7 may have been someone who had some tests done,  
 8 there may have been someone who had been  
 9 treated for breast cancer, but yet they  
 10 weren't a part of this group. So there were  
 11 some like that that I became aware of, but  
 12 Eastern Health kept reassuring me that they,  
 13 in fact, had made contact with -- contact, in  
 14 fact, was made, and some of the -- based on  
 15 that reassurance, I kept saying and repeating  
 16 what Eastern Health had been sharing that  
 17 patients had been contacted.  
 18 MS. CHAYTOR:  
 19 Q. Mr. Wiseman, did it occur to you to perhaps  
 20 give that some sort of qualification, that  
 21 perhaps not everyone had been contacted, and  
 22 perhaps we should look at putting something in  
 23 place to make sure these individuals know how  
 24 to make contact with Eastern Health and get  
 25 their results?

Page 304

1 MR. WISEMAN:  
 2 A. I'm not --  
 3 MS. CHAYTOR:  
 4 Q. Why keep repeating it?  
 5 MR. WISEMAN:  
 6 A. I'm not sure of the exact date, but I think as  
 7 we progress in the timelines because we're  
 8 here talking about a comment I made on May  
 9 15th -- I think as time went by, if I'm not  
 10 mistaken, Eastern Health did provide some  
 11 publicly released phone numbers for contacts  
 12 so people could inquire. If I'm not mistaken,  
 13 that took place later on.  
 14 MS. CHAYTOR:  
 15 Q. But in terms of you standing in the House and  
 16 repeating that people have been contacted when  
 17 you're hearing different through the public  
 18 reports or through calls to your Department,  
 19 instead of standing and repeating what Eastern  
 20 Health had said to you and given you  
 21 reassurances on, obviously at that point  
 22 there's a conflict in the information that you  
 23 are receiving -- why not instead articulate  
 24 that we are getting conflicting reports on  
 25 this; Eastern Health is giving us insurances,

Page 305

1 but we're also hearing differently? Why not,  
 2 why wouldn't that be the message?  
 3 MR. WISEMAN:  
 4 A. And that's a fair question, and I have to say  
 5 that that's not something that we reflected on  
 6 at that time, but it's a fair question.  
 7 MS. CHAYTOR:  
 8 Q. Because, of course, as we discussed earlier on  
 9 this morning in terms of your duties, your  
 10 duty, I would suggest to you, one of your  
 11 first and foremost duties are to the people of  
 12 the province?  
 13 MR. WISEMAN:  
 14 A. People of Newfoundland and Labrador.  
 15 MS. CHAYTOR:  
 16 Q. If I could just continue on then with P-0105.  
 17 Mr. Wiseman, again Ms. Michael is asking you a  
 18 question, "What I'm asking the Minister is, I  
 19 am aware of the fact that they heard about it  
 20 through the media instead of coming through  
 21 Eastern Health itself. What in the quality  
 22 control is now in place that this kind of  
 23 thing will never happen again. I understand  
 24 about tests going to a doctor, I have a test  
 25 myself, but when an error is made, people

Page 306

1 should not be learning about that error and  
 2 the retesting through the media. So what is  
 3 the quality control that will make sure that  
 4 this will not happen again", and your answer,  
 5 "One of the integral parts of the quality  
 6 control program includes the whole process of  
 7 reporting; reporting to patients, reporting to  
 8 physicians, referring physicians, ongoing  
 9 treating physicians and family physicians",  
 10 and this is the part I wanted to bring your  
 11 attention to, "Inherent in a quality control  
 12 program, which is what we have here now, are  
 13 the whole issues around protocols for  
 14 communication, protocols for disseminating  
 15 reports coming from these tests. So as part of  
 16 the normal structure of a quality control  
 17 program, these are some of the components. I  
 18 say to the Member, inherent in the quality  
 19 control program that I outlined a moment ago  
 20 are mechanisms in place to ensure appropriate  
 21 reporting takes place". Now, Mr. Wiseman,  
 22 what are you referring to? What did you  
 23 understand as of this date was inherent in the  
 24 quality control program to make sure that  
 25 appropriate communications take place in the

Page 307

1 future?  
 2 MR. WISEMAN:  
 3 A. As the first part of my response talks about,  
 4 that whole piece around reporting and the  
 5 treating physician. My emphasis here is  
 6 around reports going out to physicians and  
 7 making sure that the people who were treating  
 8 -- these laboratories are the people who are  
 9 doing the testing, and the appropriate tests  
 10 results need to go out to the people who are  
 11 actually providing the treatment, and that's  
 12 what I'm referring to here as part of the  
 13 quality control program.  
 14 MS. CHAYTOR:  
 15 Q. Okay. You talk about protocols for  
 16 communication, and the question, of course,  
 17 this is in the context of Ms. Michael's  
 18 question, and she's wondering what's been put  
 19 in place to make sure that the next time an  
 20 issue such as this should arise, if I can  
 21 interpret her question properly, what's been  
 22 put in place to make sure that there's a  
 23 protocol in place to say here's how this  
 24 should be dealt with as opposed to having  
 25 patients learn about the issue through the

Page 308

1 media. I'm just wondering what did you  
 2 understand had been put in place as of this  
 3 date, May 15th, 2007, to address that issue?  
 4 MR. WISEMAN:  
 5 A. My response to the question deals with things  
 6 that are inherent in the quality control  
 7 program to provide reports out to the  
 8 individuals who are providing treatment to the  
 9 patient. The issue around the direct  
 10 communication from the hospital or the  
 11 laboratory to the patient, I'm not addressing  
 12 in my answer.  
 13 MS. CHAYTOR:  
 14 Q. So when you say "what we have here now are the  
 15 whole issues around protocols for  
 16 communication, protocols for disseminating  
 17 reports coming from those tests", you're not  
 18 answering the question?  
 19 MR. WISEMAN:  
 20 A. The test results go directly out to -- my  
 21 response deals with the process of providing  
 22 test results to treating physicians and not  
 23 direct communication with a patient.  
 24 MS. CHAYTOR:  
 25 Q. Because that would be the process in effect,

Page 309

1 in any event?  
 2 MR. WISEMAN:  
 3 A. Yes.  
 4 MS. CHAYTOR:  
 5 Q. I mean, that would be a long-standing process  
 6 to have reports going to the treating  
 7 physician?  
 8 MR. WISEMAN:  
 9 A. Yes.  
 10 MS. CHAYTOR:  
 11 Q. So you weren't suggesting that there had now  
 12 been a new protocol put in place for  
 13 communication to patients in such a situation?  
 14 MR. WISEMAN:  
 15 A. One of the things that the -- the kind of  
 16 question that Ms. Michael is phrasing here is  
 17 one that we may have addressed -- came closer  
 18 to addressing in February when we announced a  
 19 process for dealing with adverse events or  
 20 issues of mass retesting for any population of  
 21 the province in terms of the mechanism for  
 22 managing that, and that's not inherent in a  
 23 quality control program, but it's a part of  
 24 the announcement we made in February.  
 25 MS. CHAYTOR:

Page 310

1 Q. And were in aware that Eastern Health, in  
 2 fact, had a policy in place for dealing with  
 3 adverse events at the time of this?  
 4 MR. WISEMAN:  
 5 A. That's not what my answer responds to here,  
 6 but I wasn't aware that -- I mean, I -- I  
 7 wasn't aware of what might have been in  
 8 Eastern Health's policy with respect to  
 9 adverse events at that time, I wouldn't have  
 10 been aware of the content, and I would have  
 11 only made an assumption that they had one, but  
 12 I wouldn't have been aware of the content. My  
 13 answer here clearly deals with the protocols  
 14 for providing test results back to a  
 15 physician who may have requisitioned the test  
 16 in the first place.  
 17 MS. CHAYTOR:  
 18 Q. Okay. So you weren't intending at all to  
 19 answer the question about, "Where an error is  
 20 made, people shouldn't be learning about the  
 21 error and the retesting through the media. So  
 22 what is the quality control in place to make  
 23 sure that never happens again".  
 24 MR. WISEMAN:  
 25 A. I wasn't answering her question directly, no.

Page 311

1 MS. CHAYTOR:  
 2 Q. You didn't answer that question?  
 3 MR. WISEMAN:  
 4 A. No.  
 5 MS. CHAYTOR:  
 6 Q. That's not what you were doing?  
 7 MR. WISEMAN:  
 8 A. No.  
 9 MS. CHAYTOR:  
 10 Q. And do you see how that may give the  
 11 impression that that, in fact, is what you're  
 12 speaking to?  
 13 MR. WISEMAN:  
 14 A. One of the things that --  
 15 MS. CHAYTOR:  
 16 Q. I mean, you're speaking to the people of the  
 17 province here.  
 18 MR. WISEMAN:  
 19 A. One of the things, you know, that if you were  
 20 to look at Hansard on any number of issues, I  
 21 suppose, many people in Opposition might say  
 22 that Government Members in answering questions  
 23 may not always give the exact answer that  
 24 they're looking for. I think I provided an  
 25 answer here as to how we -- in fact, how the

Page 312

1 quality -- how inherent in a quality control  
 2 program there's mechanisms and processes for  
 3 providing reports to the treating physicians.  
 4 It doesn't provide a direct answer to a very  
 5 specific part of her question, but it does  
 6 provide a statement of protocols around  
 7 quality controls having inherent in them a  
 8 process to provide reports to treating  
 9 physicians.  
 10 MS. CHAYTOR:  
 11 Q. And that's simply -- just so we understand  
 12 what you're saying, that's simply that when  
 13 you have a test done at a hospital, a report  
 14 going back to your treating physician?  
 15 MR. WISEMAN:  
 16 A. Exactly.  
 17 MS. CHAYTOR:  
 18 Q. That's all you meant by that answer?  
 19 MR. WISEMAN:  
 20 A. Exactly.  
 21 MS. CHAYTOR:  
 22 Q. And do you -- my question to you was, do you  
 23 see how the answer could be interpreted that  
 24 you're suggesting that you now have in place a  
 25 quality control program to deal with the

Page 313

1 issues of communication that arose in this  
 2 situation?  
 3 MR. WISEMAN:  
 4 A. I mean, if you interpret it that way, then  
 5 obviously others might do the same thing, but  
 6 I hadn't intended to mislead. I provided an  
 7 answer, a statement to a different question  
 8 that she may have framed.  
 9 MS. CHAYTOR:  
 10 Q. Okay. Ms. Michael continued on that day and  
 11 she came up with something that you thought  
 12 was a good suggestion. She asked, "Would the  
 13 Minister communicate to his Eastern Health the  
 14 need to do a public information program with  
 15 the details so that people will feel  
 16 confident, so that if I ever have to have a  
 17 test for breast cancer, that I will feel  
 18 confident staying here in my own province to  
 19 have that done", and you indicate to her,  
 20 "That is an excellent suggestion and I will,  
 21 in fact, relay that directly to the CEO of  
 22 Eastern Health because it is an ideal  
 23 situation. Thank you very much for making it".  
 24 Mr. Wiseman, did you relay that suggestion to  
 25 Mr. Tilley?

Page 314

1 MR. WISEMAN:  
 2 A. We had discussions after that with respect to  
 3 the need to restore confidence in the testing  
 4 process taking place at Eastern Health, and  
 5 there were some briefings that Eastern Health  
 6 made -- public briefings -- well, briefings  
 7 that were done after this, and I think Ms.  
 8 Michael would have been a part of one that was  
 9 done to MHAS, speaking to this whole issue  
 10 around what was currently in place and the  
 11 whole issue of what had happened in the ER/PR  
 12 testing.  
 13 MS. CHAYTOR:  
 14 Q. But a public information program?  
 15 MR. WISEMAN:  
 16 A. Yes, I mean, we had chatted about that, but I  
 17 -- to my knowledge, that part has not been  
 18 done.  
 19 MS. CHAYTOR:  
 20 Q. So you did suggest that, though, to Mr. Tilley  
 21 about a public information program be  
 22 initiated?  
 23 MR. WISEMAN:  
 24 A. We needed to suggest -- what I suggested to  
 25 him that we needed to look at a mechanism to

Page 315

1 ensure the people had confidence in what we  
 2 were now doing and we needed to better  
 3 understand what had taken place here, and they  
 4 needed to start communicating that to the  
 5 general population.  
 6 MS. CHAYTOR:  
 7 Q. And did you suggest to him that that be done  
 8 in a public information -- a forum where the  
 9 public could ask questions and gain that  
 10 information?  
 11 MR. WISEMAN:  
 12 A. I didn't lay it out as to how that might look,  
 13 no. I can't recall doing that part.  
 14 MS. CHAYTOR:  
 15 Q. And has that happened?  
 16 MR. WISEMAN:  
 17 A. I'm not aware of it.  
 18 MS. CHAYTOR:  
 19 Q. Do you know whether or not it was followed up  
 20 by anyone else in Eastern Health after Mr.  
 21 Tilley's departure?  
 22 MR. WISEMAN:  
 23 A. I'm not aware. I haven't asked the question.  
 24 MS. CHAYTOR:  
 25 Q. And is it an issue that you have pursued

Page 316

1 further?  
 2 MR. WISEMAN:  
 3 A. I haven't, no.  
 4 MS. CHAYTOR:  
 5 Q. So May 15th. We move on to -- the House  
 6 closes that day. What happens?  
 7 MR. WISEMAN:  
 8 A. I don't know if I -- that afternoon, I suspect  
 9 that I would have had a -- most of the staff  
 10 would generally have gone home by the time the  
 11 House closed at 5 or 5:30. I would have had  
 12 some conversations with the Deputy before the  
 13 day was over, and no doubt Tansy Mundon with  
 14 respect to following up on what had happened  
 15 earlier in the discussion, and then -- clearly  
 16 the next morning on the 16th, we would have  
 17 continued to have a discussion in and around  
 18 it.  
 19 MS. CHAYTOR:  
 20 Q. And did you have any discussions with the  
 21 media on May 15th following the House?  
 22 MR. WISEMAN:  
 23 A. I don't recall. There may have been. I mean,  
 24 during that period there was frequent media  
 25 scrums after the House -- question period in

1 the House. I'm not certain if I did that day.  
 2 I may have. I doubt very much if there was  
 3 any day that we had a discussion in the House  
 4 about ER/PR, that there wasn't some questions  
 5 from the media after. I don't recall exactly  
 6 that day if we did, but there's a good chance  
 7 I did.

8 MS. CHAYTOR:

9 Q. So you came out of the House and you met, you  
 10 would assume, with Mr. Abbott, and did you --  
 11 was there any process put in place for you to  
 12 get more information, was there any further  
 13 briefing done? What happened?

14 MR. WISEMAN:

15 A. Well, we would have had -- there would have  
 16 been some discussions that night or that  
 17 evening, and again picked up the next morning.  
 18 So the next morning we would have had another,  
 19 you know, discussion in and around it. Again  
 20 I would suspect that it would have involved,  
 21 you know, Moira and Mr. Abbott, Moira  
 22 Hennessey and John Abbott, and Tansy Mundon,  
 23 you know, to -- we really needed to -- I  
 24 needed to again build on the insights I had  
 25 gained from the day before.

1 had that kind of discussion that morning, and  
 2 I don't know if I can recall any conclusions  
 3 we reached on that Monday, on that Tuesday --  
 4 Wednesday, rather, because it's now the 16th,  
 5 the day following, but clearly there would  
 6 have been a continued discussion around it and  
 7 we would have just kind of continued to build  
 8 on some of the questions raised the day  
 9 before, and some of the information shared the  
 10 day before. We wouldn't have come to -- my  
 11 recollection wouldn't be that we came to a  
 12 conclusion of some kind that day that this  
 13 would be what we would do, but it became, you  
 14 know, the more we talked about this piece, you  
 15 know, the more, you know, it was uncertain for  
 16 me that we actually knew what went wrong here.

17 CHAYTOR, Q.C.:

18 Q. Knew what went wrong with -

19 MR. WISEMAN:

20 A. What went wrong on terms of the tests  
 21 themselves in that period between 1997 and  
 22 2005, and then -

23 CHAYTOR, Q.C.:

24 Q. And were you asking that question of Mr.  
 25 Abbott and Ms. Hennessey?

1 MS. CHAYTOR:

2 Q. And did you instruct anybody to update your  
 3 briefing note?

4 MR. WISEMAN:

5 A. I wouldn't have provided direct instruction to  
 6 have it done. That would have happened as a  
 7 matter of course.

8 MS. CHAYTOR:

9 Q. Okay. So you met then with Mr. Abbott and Ms.  
 10 Hennessey, and what was the subject matter,  
 11 what did you discuss, and how -- were they  
 12 going about doing anything to get you further  
 13 information on the ER/PR issue?

14 MR. WISEMAN:

15 A. I mean, the specifics of the meeting, I -- I  
 16 don't recall the nature of the -- the content  
 17 of the conversation, but clearly it was  
 18 building on the discussion we had already had  
 19 the day before, and there would have been a  
 20 further rehashing of what went wrong here, a  
 21 further rehashing in terms of the  
 22 communication piece, you know, how patients  
 23 are being communicated, what information is  
 24 out there, and how we need to get it out, and  
 25 how we should get it out. So we would have

1 MR. WISEMAN:

2 A. That was the nature of the kind of discussion  
 3 because now, I mean, we hadn't spent a whole  
 4 lot of time talking about the causes of in the  
 5 previous discussion on the 15th, but, you  
 6 know, and the 16th we would have start having  
 7 much more of a discussion around what went  
 8 wrong and can anyone tell me what went wrong.

9 CHAYTOR, Q.C.:

10 Q. Yes. And what answers were you getting back?

11 MR. WISEMAN:

12 A. And I wasn't getting very much clarity around  
 13 that, actually. There was pieces of, you  
 14 know, information that suggested there was,  
 15 you know, some--there was a change in  
 16 technology that occurred during that period of  
 17 time. But, you know, no one was saying that  
 18 that was the cause and the only thing that  
 19 happened here, and now that that's done, it's  
 20 over and fixed. That wasn't the case at all.  
 21 And the other piece that was troublesome is  
 22 the piece around the communication issue, you  
 23 know, the who still didn't know and if all  
 24 patients had actually, you know, had the  
 25 information communicated to them. And I was



Page 321

1 still getting the reassurance that, you know,  
 2 people were contacted, yes, we can tell you  
 3 that all contact was made with everybody who  
 4 has been retested. And so, you know, that was  
 5 the nature of the discussion on the 16th.  
 6 CHAYTOR, Q.C.:  
 7 Q. Okay. And so you're asking the question of  
 8 what went wrong here and you're asking that of  
 9 Mr. Abbott and you're asking that of Ms.  
 10 Hennessey. Did you ask that of anyone from  
 11 Eastern Health?  
 12 MR. WISEMAN:  
 13 A. I'm not sure if on the 16th there was someone  
 14 in from Eastern Health or not, but I would  
 15 have been--I know Mr. Tilley was in on the  
 16 first day. I think there was one other  
 17 meeting that I might have had that included  
 18 some people from Eastern Health. The other  
 19 piece of this, you know, was in terms of my  
 20 insight, you know, gaining a little bit of an  
 21 understanding, you know, what the test  
 22 actually was.  
 23 CHAYTOR, Q.C.:  
 24 Q. Um-hm.  
 25 MR. WISEMAN:

Page 322

1 A. You know, and so that, you know, in terms of  
 2 the population, the women who were impacted  
 3 here, you know, what had they already gone  
 4 through and what this test was intended to do.  
 5 And so the piece of that was a part of my  
 6 information, you know, gathering and my  
 7 insight that I needed to have to better  
 8 appreciate the, not just, you know, how many  
 9 people were impacted, what was the nature of  
 10 this kind of test. But, I mean, that, it soon  
 11 became very clear, and that's why you might  
 12 recall if you've been, you know, as you looked  
 13 through Hansard and the records of the House  
 14 of Assembly, you know, you might recall that,  
 15 you know, on, I think it was Thursday, which  
 16 is only a couple of days later, you know, the  
 17 Premier indicated that, you know, he hadn't  
 18 ruled out, you know, some kind of an inquiry  
 19 into what went wrong here, wanted to find out  
 20 exactly what went on and we needed to look  
 21 into some kind of study or evaluation of what  
 22 went wrong here. Because clearly, you know,  
 23 it was a very short period of time from  
 24 Tuesday when I start having, getting engaged  
 25 in the discussion around the topic to, you

Page 323

1 know, having a full presentation to our  
 2 Cabinet on Thursday to, you know, early that  
 3 following week, you know, announcing the  
 4 establishment of this Inquiry.  
 5 CHAYTOR, Q.C.:  
 6 Q. Yes, within a week, I know.  
 7 MR. WISEMAN:  
 8 A. Yeah, within. So in that very short period of  
 9 time, you know, there was a lot of intense  
 10 discussion, a lot of, you know, one on one  
 11 discussions, a lot of meetings or groups of  
 12 individuals, meaning three or four of us  
 13 sitting around and having a chat about it, you  
 14 know, so there was a fair intense discussion.  
 15 To be able to walk you through each and every  
 16 one of them in sequence, it's kind of  
 17 difficult to do, but -  
 18 CHAYTOR, Q.C.:  
 19 Q. That's fine, I'm not asking that. I -  
 20 MR. WISEMAN:  
 21 A. But I just want to be, give you flavour for,  
 22 you know, the nature of or feel for, rather,  
 23 the intense discussions that took place at a  
 24 number of levels both in the Department that  
 25 myself and officials -

Page 324

1 CHAYTOR, Q.C.:  
 2 Q. Yes, and beyond the Department, I would think.  
 3 MR. WISEMAN:  
 4 A. And outside the Department with the Cabinet as  
 5 a whole, you know -  
 6 CHAYTOR, Q.C.:  
 7 Q. And that's on the 17th. And we'll get to  
 8 that.  
 9 MR. WISEMAN:  
 10 A. Yeah. So there was a, you know, a fair  
 11 intense discussion leading up to, you know,  
 12 what was the announcement and the  
 13 establishment of this Inquiry -  
 14 CHAYTOR, Q.C.:  
 15 Q. Yes, and we'll get through that.  
 16 MR. WISEMAN:  
 17 A. But the reason I'm saying it to you now is  
 18 that, you know, the discussions as we walk  
 19 through the 15th discussion and the 16th  
 20 discussion, you know, there was a very dynamic  
 21 kind of discussion and frequent and involving  
 22 many different people at varying levels to  
 23 reach the conclusion that we reached on  
 24 Tuesday to bring us where we are today.  
 25 CHAYTOR, Q.C.:

Page 325

1 Q. That you needed an inquiry to figure out what  
 2 went wrong?  
 3 MR. WISEMAN:  
 4 A. We needed--there was a lot of unanswered  
 5 questions here, yes.  
 6 CHAYTOR, Q.C.:  
 7 Q. Yes. And that's the first term of reference.  
 8 So what you're telling me is that in that  
 9 short period of time of a week you did have  
 10 many discussions, both within your Department  
 11 with your officials, within--with officials  
 12 from Eastern Health, within government and  
 13 could not get the answer to the question, what  
 14 went wrong?  
 15 MR. WISEMAN:  
 16 A. No.  
 17 CHAYTOR, Q.C.:  
 18 Q. You could not get the answer?  
 19 MR. WISEMAN:  
 20 A. Not one that satisfied me.  
 21 CHAYTOR, Q.C.:  
 22 Q. Okay. What answer did you get?  
 23 MR. WISEMAN:  
 24 A. I mean, I didn't get a definitive answer one  
 25 way or the other. I got some references to,

Page 326

1 you know, the need for better standards; I got  
 2 the reference to the fact technology had  
 3 changed; I got a reference to the  
 4 recommendations that were, you know, talked  
 5 about improvements in the quality assurance  
 6 program; we got references to dedicated staff,  
 7 so obviously there was some staffing issues;  
 8 there was some issues around the quality  
 9 control program; there was obviously some  
 10 issues around technology that might have been  
 11 used or may not have been used. So there was--  
 12 and then there was the whole piece around the  
 13 management process in terms of how this whole  
 14 thing got managed.  
 15 CHAYTOR, Q.C.:  
 16 Q. Yes. When -  
 17 MR. WISEMAN:  
 18 A. And then we had the surface of a, you know,  
 19 this sense that we had a laboratory that was  
 20 providing, you know, a very sensitive test  
 21 that impacted a large number of people and  
 22 we're now finding that, you know, there was  
 23 communications decisions never got made and  
 24 there was management processes obviously that  
 25 were coming into question. And to get a, some

Page 327

1 clarity around this piece and the public  
 2 needed to have some of these answers, and the  
 3 way to do that was the choice we've made,  
 4 which is in a very public way to have a  
 5 discussion like we're having here today and  
 6 have that very open kind of exploration of  
 7 what took place on a number of fronts.  
 8 Testing procedure being one, the communication  
 9 piece being another, in disclosure to patients  
 10 being another and that's what we're doing  
 11 here.  
 12 CHAYTOR, Q.C.:  
 13 Q. Yes. Mr. Wiseman, did Moira Hennessey ever  
 14 tell you that she had sought the findings from  
 15 the two external reports?  
 16 MR. WISEMAN:  
 17 A. I'm not certain. She may have, but I--the  
 18 conversation around the external reports were  
 19 -  
 20 CHAYTOR, Q.C.:  
 21 Q. No, just thing about that for a moment now.  
 22 MR. WISEMAN:  
 23 A. Yeah. She may have. I can't--I wouldn't want  
 24 to say definitively that she did or didn't.  
 25 If--she quite possibly would have.

Page 328

1 CHAYTOR, Q.C.:  
 2 Q. And did she tell you what answer she was  
 3 given, if any?  
 4 MR. WISEMAN:  
 5 A. I can't recall. The conversation that I had  
 6 around the -  
 7 CHAYTOR, Q.C.:  
 8 Q. And this all would have just happened sometime  
 9 subsequent to May 15th, 2007. You don't  
 10 recall that discussion -  
 11 MR. WISEMAN:  
 12 A. The conversation that I -  
 13 CHAYTOR, Q.C.:  
 14 Q. - if any, with Moira Hennessey?  
 15 MR. WISEMAN:  
 16 A. The conversation--I had multiple conversations  
 17 with Moira -  
 18 CHAYTOR, Q.C.:  
 19 Q. No, but in terms of you know there are two  
 20 external reports -  
 21 MR. WISEMAN:  
 22 A. Yes.  
 23 CHAYTOR, Q.C.:  
 24 Q. - or you know there were two external reviews  
 25 done.

Page 329

1 MR. WISEMAN:  
 2 A. Yes.  
 3 CHAYTOR, Q.C.:  
 4 Q. Did Moira Hennessey ever tell you that she  
 5 went looking for the findings from those  
 6 reports or from those reviews?  
 7 MR. WISEMAN:  
 8 A. I'm sure if she did, she'd no doubt share it  
 9 with me, but I just can't recall it. My  
 10 conversation about the external reports were I  
 11 was advised that they were part of a peer  
 12 review process and there was a discussion  
 13 around it as -  
 14 CHAYTOR, Q.C.:  
 15 Q. And Mr. Abbott advised you of that?  
 16 MR. WISEMAN:  
 17 A. Yeah, there was a discussion around it,  
 18 around--or a discussion around the external  
 19 reviews that took place during that period of  
 20 the 15th, 16th, 17th, in that kind of time  
 21 frame. There were some subsequent discussions  
 22 around the reviews that took place, you know,  
 23 later on throughout the, you know, early fall  
 24 that we were involved--I was involved with  
 25 with the Department. But the discussions that

Page 330

1 took place around that period of 15th, 16th,  
 2 17th, you know, they--my recollection, the  
 3 things that stood out for me was that the  
 4 reviews were conducted as a part of a peer  
 5 review process.  
 6 CHAYTOR, Q.C.:  
 7 Q. Yes.  
 8 MR. WISEMAN:  
 9 A. And based on my understanding of the peer  
 10 review process I, you know, that that was  
 11 information that wouldn't have been available  
 12 to me and information that wouldn't have been  
 13 available to the Department. Now, that,  
 14 informing that would have been a couple of  
 15 things. One would have been some of my own  
 16 personal knowledge that I would have brought  
 17 to my current role.  
 18 CHAYTOR, Q.C.:  
 19 Q. Yes, because you had extensive background in  
 20 health care administration.  
 21 MR. WISEMAN:  
 22 A. Well -  
 23 CHAYTOR, Q.C.:  
 24 Q. So you, this concept wouldn't have been  
 25 foreign to you -

Page 331

1 MR. WISEMAN:  
 2 A. The concept of peer review wasn't a foreign  
 3 concept to me -  
 4 CHAYTOR, Q.C.:  
 5 Q. Or having reviews done within the health  
 6 system -  
 7 MR. WISEMAN:  
 8 A. Not a foreign thing at all, no.  
 9 CHAYTOR, Q.C.:  
 10 Q. Right. So though thinking about that, though,  
 11 if I may, Mr. Wiseman, I don't mean to cut you  
 12 off, but just, you have some background in how  
 13 these things work. And you know there's been  
 14 two external reviewers come in.  
 15 MR. WISEMAN:  
 16 A. Yeah.  
 17 CHAYTOR, Q.C.:  
 18 Q. During that week when you're asking the  
 19 questions and from what I'm gathering, asking  
 20 the question repeatedly of basically anyone  
 21 you can think you can get the answer from of  
 22 what went wrong with this testing process. Do  
 23 you think to say, "Well, you got these  
 24 reviews. Okay, you're telling me you can't  
 25 tell me what was concluded, but at least you

Page 332

1 can tell me did it figure out what the problem  
 2 was and have you fixed it?"  
 3 MR. WISEMAN:  
 4 A. Well, the second part of your question was  
 5 have you fixed it. The recommendations that  
 6 came from the report through the ones that we  
 7 went through earlier I was told that to the  
 8 recommendations had been implemented, so  
 9 therefore, by extension, if the  
 10 recommendations that a group of people make  
 11 for improvement get implemented, then you  
 12 assume that the problems identified were  
 13 fixed. With respect to the, you know, the  
 14 report itself, and let me go back to your  
 15 question about Moira and asking for the  
 16 report, I mean, I was -  
 17 CHAYTOR, Q.C.:  
 18 Q. Asking for the findings, yeah, she requested  
 19 the findings.  
 20 MR. WISEMAN:  
 21 A. The answers that I was getting around the, not  
 22 so much I wasn't framing them as the findings  
 23 in the report, and people who were sharing  
 24 comments weren't sharing them as the reports  
 25 suggested this, that kind of phrase wasn't

Page 333

1 being used, so I wasn't getting comments that  
 2 were suggesting this came out of the report.  
 3 But what I was getting much more about was,  
 4 you know, vague discussions around the  
 5 technology and the implication for the change  
 6 with the new technology. And but by--you  
 7 know, if you look at the -  
 8 CHAYTOR, Q.C.:  
 9 Q. Sorry, who was telling you that about the  
 10 technology?  
 11 MR. WISEMAN:  
 12 A. And as a part of the briefing process, I  
 13 became aware that there was a change in the  
 14 technology used -  
 15 CHAYTOR, Q.C.:  
 16 Q. Yes.  
 17 MR. WISEMAN:  
 18 A. - during that period from 1997 to 2005. The  
 19 new system was implemented in 2004. So as a  
 20 part of that, you know, that briefing process,  
 21 you know, I became aware -  
 22 CHAYTOR, Q.C.:  
 23 Q. And was that being told to you as an  
 24 explanation for the problem?  
 25 MR. WISEMAN:

Page 334

1 A. It's a part of the explanation as to, not so  
 2 much a problem but some of the things that  
 3 might fix it. No one had ever -  
 4 CHAYTOR, Q.C.:  
 5 Q. That might have fixed -  
 6 MR. WISEMAN:  
 7 A. No one had ever said to me that the definitive  
 8 problem here was the fact that we were using  
 9 outdated technology, no one ever said that.  
 10 No one ever suggested that because we now have  
 11 implemented this new system in 2004 our  
 12 problems have gone away, no one used that kind  
 13 of language. The other thing that, you know,  
 14 as we talked about the things that have  
 15 occurred there and the need, the changes that  
 16 were needed, some of the changes that were  
 17 needed spoke to issues around quality  
 18 assurance.  
 19 CHAYTOR, Q.C.:  
 20 Q. Yes.  
 21 MR. WISEMAN:  
 22 A. Some of the changes that were needed spoke to  
 23 issues around staffing, some of the changes  
 24 that were needed spoke to issues around  
 25 standards and processes and protocols and

Page 335

1 policies. So if all of those sorts of things  
 2 are what's required to bring about the change,  
 3 then obviously the problem wasn't simply  
 4 technology, there was multiple factors at play  
 5 here. And you know, so at that particular  
 6 time, you know, when I was having that  
 7 discussion, there was those pieces. The  
 8 second couple of pieces that were haunting is  
 9 that, you know, there was some management  
 10 processes here that we needed to better  
 11 understand why things got managed the way that  
 12 they did. The whole issue around the  
 13 communication to the patients themselves, the  
 14 whole issue of disclosure, you know, needed to  
 15 be better understood why that happened and  
 16 when it happened.  
 17 CHAYTOR, Q.C.:  
 18 Q. Yes.  
 19 MR. WISEMAN:  
 20 A. So, you know, I wasn't getting any--an  
 21 adequate answer and an adequate understanding  
 22 to know that this is exactly what happened to  
 23 cause this and we now have--actually know  
 24 exactly what it is we need to do, you know, to  
 25 make sure that we better understand what took

Page 336

1 place. And so I wasn't getting the answer and  
 2 that's why we ended up here.  
 3 CHAYTOR, Q.C.:  
 4 Q. And did you specifically put the question to  
 5 Mr. Tilley or anybody else from Eastern Health  
 6 "Without telling me what's in your so-called  
 7 peer review reports or reviews, did it  
 8 identify the problems and have they been  
 9 fixed?"  
 10 MR. WISEMAN:  
 11 A. Well, as that conversation continued to  
 12 unfold, I mean, you were showing us earlier a  
 13 copy of a fax that came in at the end of May,  
 14 you know, from the period of time that we  
 15 started having the discussion until we got  
 16 that fax, that's when we got the summary of  
 17 the recommendations that were made but -  
 18 CHAYTOR, Q.C.:  
 19 Q. You've already called the Inquiry. So before  
 20 you called the Inquiry on May 22nd your number  
 21 one term of reference is what happened. Did  
 22 you put the question to Mr. Tilley, "What  
 23 happened?"  
 24 MR. WISEMAN:  
 25 A. I recall, I mean, the issue -

Page 337

1 CHAYTOR, Q.C.:

2 Q. And "Did your reviews shed any light on this?"

3 MR. WISEMAN:

4 A. "Can you tell me what happened here? Can you

5 tell me what went wrong?"

6 CHAYTOR, Q.C.:

7 Q. Yeah, did you -

8 MR. WISEMAN:

9 A. I used that kind -

10 CHAYTOR, Q.C.:

11 Q. But in terms of the reviews?

12 MR. WISEMAN:

13 A. I didn't ask it in terms of the--I may not

14 have framed it, "Can you tell me what was in

15 the external reviews that can describe what

16 went wrong here?" But very clearly in my

17 discussion with Mr. Tilley it would have been,

18 "Can you tell me what happened here? Like,

19 what went wrong, how did this get where we are

20 today?"

21 CHAYTOR, Q.C.:

22 Q. Yes.

23 MR. WISEMAN:

24 A. I very clearly posed that question. And the

25 answer that I was getting from them wasn't in

Page 338

1 the context of the two peer reviews, but it

2 was a question that I was asking the CEO of an

3 organization that would have been, had, I

4 guess, you know, many avenues to understand

5 what was going on in the laboratory. One

6 would have been some internal mechanisms he

7 would have had in place, together with what

8 might have been a part of an external review.

9 So fundamentally as I was asking a CEO of an

10 organization "What went wrong here? We got

11 this major problem before us. Something went

12 wrong; something went awry. What is it, can

13 you tell me? And on the number of these

14 fronts, why did we have so many people with

15 test conversion, why did we have so--these

16 issues around disclosure? I mean, what took

17 place?" And in the absence of anything that

18 was reassuring and clear with respect to an

19 understanding of what actually took place, you

20 know, the discussion with my Cabinet

21 colleagues, you know, we arrived at this

22 conclusion and that we've done and we've asked

23 for the Inquiry that we're a part of today.

24 CHAYTOR, Q.C.:

25 Q. So you didn't specifically put the question to

Page 339

1 Mr. Tilley, "What, without telling me what's

2 in the reports, were the reviews able to

3 identify the problem and have the problems, if

4 more than one, been fixed?"

5 MR. WISEMAN:

6 A. The discussion around the reports themselves

7 that I recall having with Mr. Tilley focused,

8 you know, the responses focused more around

9 the series of recommendations that we have to

10 move forward with. And the responses were

11 much more -

12 CHAYTOR, Q.C.:

13 Q. So nothing about the problem itself and

14 whether or not -

15 MR. WISEMAN:

16 A. Much more about the recommendations rather

17 than the, any kind of observations that the

18 reports would have had with respect to what

19 might be problems here.

20 CHAYTOR, Q.C.:

21 Q. Well, if recommendations are made, I take it

22 that to make a recommendation the problem

23 would have to first be identified?

24 MR. WISEMAN:

25 A. You would assume that, yes, right.

Page 340

1 CHAYTOR, Q.C.:

2 Q. But you didn't ask Mr. Tilley whether or not

3 the problem had been adequately identified

4 and, in fact, fixed?

5 MR. WISEMAN:

6 A. Well, I didn't ask the question directly "Have

7 the problems been adequately identified?"

8 What we talked a little bit about was the

9 recommendations that came from, and his

10 discussion with me focused much more around

11 the recommendations that came out of the

12 report rather than any problems that may have

13 been identified. And when we got the

14 recommendations, you're able to, you know,

15 glean some insight, I guess, from the

16 recommendations as to what might have been the

17 origin for those recommendations, what might

18 have been the insight gained that would prompt

19 such a recommendation.

20 CHAYTOR, Q.C.:

21 Q. Yes.

22 MR. WISEMAN:

23 A. When you got recommendations around, you know,

24 dedicated staff, then obviously you conclude

25 that the staff that are there now aren't

1 necessarily dedicated to it. If you got  
 2 recommendations around quality assurance  
 3 programs and what that might look like, then  
 4 the assumption is that what's there now  
 5 doesn't reflect that current best practice.  
 6 So if you look at each of the recommendations  
 7 and ask yourself that question, then there's--  
 8 especially, you know, if you've, you know, had  
 9 some sense of how that--how labs might work,  
 10 you might draw that conclusion, you might be  
 11 able to, you know, work backwards and conclude  
 12 what the observation might have been. But,  
 13 you know, clearly the--and in the absence, and  
 14 we're talking about this now in the context, I  
 15 appreciate your questions are in the context  
 16 of May of 2007. But, you know, I sit here  
 17 today having acknowledged to you earlier that  
 18 I have since read the two reports several  
 19 times and -

20 CHAYTOR, Q.C.:

21 Q. You didn't intend to read them last time we  
 22 met.

23 MR. WISEMAN:

24 A. No, I didn't, actually, because I had said -

25 CHAYTOR, Q.C.:

1 two different perspectives. And in as much as  
 2 there are certain conclusions drawn in both,  
 3 in the technologist's position, you know, she  
 4 summarizes in one paragraph some issues around  
 5 operational issues and standards and protocols  
 6 and the absence of them left us to where we  
 7 are today. In the pathologist's, you know,  
 8 there's some conclusions that he's--not  
 9 conclusions, but observations that he's made  
 10 in the beginning of one of his reports that  
 11 talks around--talks about the practice of  
 12 pathologists. But I wouldn't have gleaned  
 13 from either one of them that this is a  
 14 conclusive is and clear definitive statement  
 15 that this is what's happening in that area of  
 16 the lab or this is what was happening in that  
 17 area of the lab during this period. I  
 18 wouldn't have come to that conclusion  
 19 necessarily.

20 MS. CHAYTOR:

21 Q. Did you ask Mr. Tilley how a state of affairs  
 22 could arise that the root cause of such a  
 23 problem could only be identified by external  
 24 reviewers?

25 MR. WISEMAN:

1 Q. So what changed your mind, why did read the  
 2 reports?

3 MR. WISEMAN:

4 A. This is a process we're going through here  
 5 with a view of trying to learn something. And  
 6 you know, from the conversations we had the  
 7 last time and the way you framed your  
 8 questions, you know, peaked my curiosity and I  
 9 went back and read the reports several times.  
 10 And if I--and you might suggest it's easy for  
 11 me to say that as I sit here today, but if I  
 12 had read them last year in May, I don't think  
 13 it would have changed my mind with respect to  
 14 the reason we're here today. You know, one  
 15 report is written by a pathologist and the  
 16 other report is written by a technologist and  
 17 if you read the reports as I--I mean, I have a  
 18 very--I don't have a clinical background, but  
 19 and I read the reports, you know, it's obvious  
 20 that the pathologist has read it from a  
 21 pathologist's perspective and some of his  
 22 focus is around pathology and pathologists and  
 23 their practice and function. The technologist  
 24 has looked at the operational side of it, the  
 25 running of the lab. And they come at it from

1 A. Well, we did--didn't get into a, you know, a  
 2 lengthy discussion around it, you know, as a  
 3 CEO, you know, it's a fair question for me to  
 4 ask of a CEO. I mean, what internal  
 5 mechanisms would you have in place and, you  
 6 know, to have detected some of this stuff  
 7 earlier. And you know, again, I got an answer  
 8 that didn't give me that clarity and comfort  
 9 that I needed to have and should have had as a  
 10 Minister. And again, I keep coming back to  
 11 this point, you know, from the discussions  
 12 that occurred over that three or four days  
 13 between the 15th and the weekend, you know,  
 14 when we eventually made the decision to  
 15 establish this Inquiry, the vagaries of some  
 16 of those insights were such that, you know,  
 17 prompted us to do what we were doing.

18 MS. CHAYTOR:

19 Q. Mr. Wiseman, you've become acutely aware of  
 20 this issue on May 15, 2007 and it's the first  
 21 time, as Minister, you've dealt with the  
 22 issue. And you've told me about discussions  
 23 you had then in follow up with Mr. Abbott and  
 24 other officials in your department. When did  
 25 you first discuss the issue with others within

Page 345

1 government?  
 2 MR. WISEMAN:  
 3 A. The following day.  
 4 MS. CHAYTOR:  
 5 Q. Okay, so, on May 16?  
 6 MR. WISEMAN:  
 7 A. The 16th, yes.  
 8 MS. CHAYTOR:  
 9 Q. And who did you discuss this issue with?  
 10 MR. WISEMAN:  
 11 A. I had a brief discussion with the Premier and  
 12 I -  
 13 MS. CHAYTOR:  
 14 Q. So this is the morning of the 16th?  
 15 MR. WISEMAN:  
 16 A. Some time during the 16th.  
 17 MS. CHAYTOR:  
 18 Q. Okay. And tell me about that conversation;  
 19 what was said?  
 20 MR. WISEMAN:  
 21 A. It was to give him some update on what  
 22 insights I had gained during that period of  
 23 time.  
 24 MS. CHAYTOR:  
 25 Q. And did you request that meeting or did the

Page 346

1 Premier?  
 2 MR. WISEMAN:  
 3 A. Just one that I had, you know, we had--it  
 4 wasn't a formal meeting where I went and met  
 5 with him in his office or he came to my office  
 6 and met, but the House of Assembly is open.  
 7 So, you know, we had an opportunity to have  
 8 that discussion.  
 9 MS. CHAYTOR:  
 10 Q. So it was a phone call?  
 11 MR. WISEMAN:  
 12 A. No, it was a -  
 13 MS. CHAYTOR:  
 14 Q. Face-to-face with -  
 15 MR. WISEMAN:  
 16 A. Face-to-face exchange we had. And had a brief  
 17 discussion with his Chief of Staff and -  
 18 MS. CHAYTOR:  
 19 Q. Is that at the same time or that's--so, the  
 20 first discussion you have is with the Premier?  
 21 MR. WISEMAN:  
 22 A. I think it was just--I'm not sure what  
 23 sequence they occurred, but they were both -  
 24 MS. CHAYTOR:  
 25 Q. So, tell me about the discussion then with the

Page 347

1 Premier; what was said?  
 2 MR. WISEMAN:  
 3 A. Both of them was to give them an update on the  
 4 insights I had gained from discussions that we  
 5 had continued on the 16th and that, you know,  
 6 this was something that we needed to have some  
 7 further discussion about as a Cabinet. And  
 8 from those discussions with both his Chief of  
 9 Staff and with himself, you know, that's when  
 10 we -  
 11 MS. CHAYTOR:  
 12 Q. And his Chief of Staff is Brian Crawley?  
 13 MR. WISEMAN:  
 14 A. Yes. And that's when we would have decided  
 15 that there'd be a discussion in Cabinet the  
 16 following day on that issue. And I think -  
 17 MS. CHAYTOR:  
 18 Q. And what questions did the Premier have?  
 19 MR. WISEMAN:  
 20 A. I mean, he was curious to know what went wrong  
 21 and what happened and why we are where we are  
 22 now. And, you know, his concerns centred  
 23 around, I mean, the people are impacted here,  
 24 I mean, the fact that they don't have their  
 25 test results, what impact is that going to

Page 348

1 have on their health and he was quite, showed  
 2 an interested in the welfare of these  
 3 individuals who'd been impacted. And in  
 4 addition to the what happened, you know, how  
 5 did we get to be where we are today. And then  
 6 the second piece, in terms of the significance  
 7 of this issue for the patients who are  
 8 impacted.  
 9 MS. CHAYTOR:  
 10 Q. Okay. And so he was concerned about the issue  
 11 of patients not having their information.  
 12 MR. WISEMAN:  
 13 A. Yes.  
 14 MS. CHAYTOR:  
 15 Q. He was concerned about that?  
 16 MR. WISEMAN:  
 17 A. Yes.  
 18 MS. CHAYTOR:  
 19 Q. On this is on May 16?  
 20 MR. WISEMAN:  
 21 A. Uh-hm.  
 22 MS. CHAYTOR:  
 23 Q. Yes. Okay. And what was different, like, why  
 24 on May 15 does this become such an issue?  
 25 What's different about the issue on May 15 as

Page 349

1 opposed to December 11, 2006 or October 2005?  
 2 MR. WISEMAN:  
 3 A. I mean, the significance of the issue in '07  
 4 is no different than how significant it was in  
 5 '05 or '06. And the importance of it to the  
 6 people who were affected hasn't changed. The  
 7 fact that it happened and the manner in which  
 8 it happened, those facts haven't really  
 9 changed. I think the--having been seized with  
 10 that issue myself at that point and wanting  
 11 to--and starting to get a feel that I was  
 12 uncomfortable with the answers I was getting,  
 13 as I said a moment ago, around what went wrong  
 14 here. And we needed to--so that was one piece  
 15 of it.  
 16 The second piece is we needed to, very  
 17 quickly, make this right. I mean, this has  
 18 been on the go for a long, long time, with the  
 19 first issue arising in 2005 and we're now in  
 20 2007 and still patients have been, still not  
 21 appropriately treated or having their results  
 22 communicated to them and there's still those  
 23 haunting answers. So, I guess the--I wasn't  
 24 part of the discussion that took place in '05  
 25 or '06, so I can't comment on the nature of

Page 350

1 that and how things unfolded during those  
 2 periods. You know, I can only comment as to  
 3 what I was involved with starting May 15 of  
 4 2007. And from my perspective, a couple of  
 5 things that happened; number (1) there'd been  
 6 some problems in the lab between 2007 and--or  
 7 1997 and 2005, but I wasn't getting the right-  
 8 -not right answer--wasn't getting a  
 9 satisfactory answer to satisfy myself. The  
 10 whole issue around, you know, how could this  
 11 have happened; I wasn't getting that answer.  
 12 The issue around the impact on patients, the  
 13 fact that I wasn't comfortable with that piece  
 14 in the disclosure piece. And as a result of  
 15 that, I wanted to advance this discussion to  
 16 ensure that my colleagues got brought into the  
 17 loop and we had a fuller discussion and  
 18 created a better understanding within our  
 19 Cabinet. So as a government, I represent the  
 20 Cabinet as in my ministerial portfolio and I  
 21 speak on behalf of government on health  
 22 related issues. But I'll speak on behalf of  
 23 government and I wanted to make sure that my  
 24 colleagues were informed of the issue and had  
 25 a similar understanding that I was starting to

Page 351

1 gain and a similar insight that I was starting  
 2 to get. They needed to know that and  
 3 collectively then we could decide how we move  
 4 forward.  
 5 MS. CHAYTOR:  
 6 Q. Okay. And then that brings us to the May 17  
 7 briefing at Cabinet.  
 8 MR. WISEMAN:  
 9 A. Yes.  
 10 MS. CHAYTOR:  
 11 Q. But I'm just--and I appreciate that you were  
 12 new to this by mid May 2007, that you're new  
 13 to it. So, is that what's different, that now  
 14 we have Ross Wiseman looking at this issue?  
 15 Because the government had all this  
 16 information and the government and the  
 17 department had been dealing with this issue  
 18 for quite some period of time. So, I'm just  
 19 asking why in mid May 2007 this becomes an  
 20 issue of the magnitude that we're here today  
 21 and, I mean it was an issue of that magnitude  
 22 back quite some time before that.  
 23 MR. WISEMAN:  
 24 A. I really am not in a position to--because I  
 25 wasn't a part of the Cabinet earlier. I

Page 352

1 wasn't the Minister until January 2007 and I  
 2 can speak very clearly and very confidently to  
 3 my perspective on the issue when I became  
 4 seized with it in May 2007. And I think where  
 5 we are today and how, you know, we're having  
 6 this open and frank discussion around this  
 7 with many, many people today is a reflection  
 8 of actions that we've taken since May of 2007.  
 9 You know, the government is very clearly, has  
 10 always been, I think, my two former colleagues  
 11 may have shared with you their own perspective  
 12 in terms of their interest in the patient and  
 13 patients' health and wellbeing. And you know,  
 14 as a government, that's been something that  
 15 we've always--whether it's on this issue or  
 16 other health related issues, the patient  
 17 safety and quality of patient care has always  
 18 been critical for us. But in May of 2007, you  
 19 know, from where I sat as a Minister, with the  
 20 information that I had before me at that time,  
 21 viewing it at that point in time through my  
 22 lens, then what we're doing here today is an  
 23 appropriate response.  
 24 MS. CHAYTOR:  
 25 Q. Okay. On May 16 when you had your first



Page 353

1 discussion with the Premier on this issue, did  
 2 he supply you with any information?  
 3 MR. WISEMAN:  
 4 A. Not that I recall.  
 5 MS. CHAYTOR:  
 6 Q. So, the Premier was asking you questions as to  
 7 the status, but there was no information the  
 8 other way that the Premier was able to offer  
 9 to you?  
 10 MR. WISEMAN:  
 11 A. No, it was much more of a process of my  
 12 bringing the Premier up to speed on an issue  
 13 that I thought was critical and important and  
 14 I was giving him a commentary about where we  
 15 were and what I was doing.  
 16 MS. CHAYTOR:  
 17 Q. And your discussions with Brian Crawley, what  
 18 were those discussions -  
 19 MR. WISEMAN:  
 20 A. Very similar in some respects, you know, just  
 21 give him my assessment of where we were and  
 22 what we needed to do to move forward and the  
 23 desire to have a fuller discussion in the  
 24 Cabinet with respect to the issue.  
 25 MS. CHAYTOR:

Page 354

1 Q. You took issue with--you said that you took  
 2 issue with the fact that not all the numbers  
 3 had come out originally and that was the focus  
 4 of the CBC story which broke this again in mid  
 5 May of 2007. Did you have that discussion  
 6 with the Premier, the fact that this is coming  
 7 up, this now an issue for discussion again in  
 8 the public forum because there was some  
 9 withholding of numbers? Did -  
 10 MR. WISEMAN:  
 11 A. I did.  
 12 MS. CHAYTOR:  
 13 Q. - you have that discussion with him?  
 14 MR. WISEMAN:  
 15 A. I did share that information.  
 16 MS. CHAYTOR:  
 17 Q. Yes. And were you upset by that? Were you  
 18 upset by the whole fact that numbers had not  
 19 come out?  
 20 MR. WISEMAN:  
 21 A. It was disturbing, yes. I mean, go back to my  
 22 earlier comment this morning with respect to  
 23 disclosure piece. You know, fundamentally, if  
 24 we have information or health authorities have  
 25 information that impacts a patients, that

Page 355

1 patient deserves to know that and should know  
 2 that and that information should be  
 3 communicated to them. And then if we, you  
 4 know, to intentionally withhold information; I  
 5 think that's fundamentally wrong. Now the  
 6 issue around the disclosure in 2005, you know,  
 7 Eastern Health was listening to some advice  
 8 from physicians and, as I understand, the  
 9 Minister of that day, he had heard that appeal  
 10 from Eastern Health to not proceed and  
 11 disclose the information. I wasn't part of  
 12 that discussion, so I can't comment on whether  
 13 or not, you know, the nature of that advice.  
 14 But clearly though -  
 15 MS. CHAYTOR:  
 16 Q. But you also formed the opinion that you  
 17 didn't agree with that either.  
 18 MR. WISEMAN:  
 19 A. I didn't then and -  
 20 MS. CHAYTOR:  
 21 Q. But you were upset by the fact that all of the  
 22 numbers hadn't come out in December 2006 and  
 23 did you tell that to the Premier?  
 24 MR. WISEMAN:  
 25 A. I mean, it was my view then and it is now

Page 356

1 that, you know, there's two opportunities here  
 2 to have been upfront and disclosed--provided a  
 3 full disclosure, one was in 2005 and the  
 4 second one was in December 2006.  
 5 MS. CHAYTOR:  
 6 Q. Yes, and did you tell the Premier how strongly  
 7 you felt on the fact that the numbers had not  
 8 come out?  
 9 MR. WISEMAN:  
 10 A. I think the Premier fully understood where my  
 11 opinions were, yes.  
 12 MS. CHAYTOR:  
 13 Q. Yes. And did the Premier offer any opinion,  
 14 himself, on the issue?  
 15 MR. WISEMAN:  
 16 A. I think the Premier has been very clear with  
 17 respect to -  
 18 MR. WISEMAN:  
 19 A. I'm talking about that day, May 16 when you  
 20 spoke with him.  
 21 MR. WISEMAN:  
 22 A. - you know, his view of disclosure. I mean,  
 23 the discussions that I had in and around that  
 24 15, 16th--or 16th, 17th time period, you know,  
 25 the Premier was very clear during that period

Page 357

1 that needing--the disclosure of information  
 2 was critical. Patients needed to have  
 3 information in 2005, so they could make  
 4 informed decision and choices about their own  
 5 treatment and what they may or may not decide  
 6 to do with information. It was clear that it  
 7 was not Eastern Health's role to determine  
 8 whether or not the patient should have had the  
 9 information or could have had the information  
 10 or needed the information, provide that  
 11 information -  
 12 MS. CHAYTOR:  
 13 Q. So, even back before the re-testing took place  
 14 -  
 15 MR. WISEMAN:  
 16 A. Yes.  
 17 MS. CHAYTOR:  
 18 Q. - that the opinion would be that patients  
 19 should be informed so they can decide how to  
 20 manage their own care?  
 21 MR. WISEMAN:  
 22 A. That was the opinion that he expressed at that  
 23 point, yes.  
 24 MS. CHAYTOR:  
 25 Q. And you shared that opinion?

Page 358

1 MR. WISEMAN:  
 2 A. Very much so.  
 3 MS. CHAYTOR:  
 4 Q. Okay. And in terms of the numbers not having  
 5 come out in December 2006, was the Premier  
 6 aware that that had happened?  
 7 MR. WISEMAN:  
 8 A. To my knowledge, you know, from my discussions  
 9 and presentations, part of the presentation to  
 10 Cabinet on the 17th, that was the first time  
 11 that the Premier was seeing that level of  
 12 detail.  
 13 MS. CHAYTOR:  
 14 Q. So, he was surprised when you spoke to him on  
 15 May 16 that this had happened; that the  
 16 numbers had not been disclosed in December  
 17 2006?  
 18 MR. WISEMAN:  
 19 A. Yes.  
 20 MS. CHAYTOR:  
 21 Q. And he had understood the numbers had come  
 22 out?  
 23 MR. WISEMAN:  
 24 A. Well, the issue of the understanding the  
 25 Premier had, I wouldn't want to speak to that

Page 359

1 and that's a question you might want to ask  
 2 him directly. In response to your question,  
 3 was he surprised that it hadn't come out?  
 4 Yes.  
 5 MS. CHAYTOR:  
 6 Q. Yes, okay. Did you speak to anyone else then?  
 7 You spoke to the Premier; you spoke to  
 8 officials in your own department, Mr. Crawley;  
 9 did you speak to anyone else about the issue?  
 10 MR. WISEMAN:  
 11 A. I don't recall having any other discussions  
 12 with other officials, no.  
 13 MS. CHAYTOR:  
 14 Q. Okay. And then May 16 you've had meetings  
 15 then with your officials.  
 16 MR. WISEMAN:  
 17 A. Uh-hm.  
 18 MS. CHAYTOR:  
 19 Q. You did get an updated briefing note. In  
 20 fact, there are two updated briefing notes for  
 21 May 16 and you don't recall if you  
 22 specifically asked for that. That would have  
 23 been done automatically, I understand.  
 24 MR. WISEMAN:  
 25 A. It would have been, yes.

Page 360

1 MS. CHAYTOR:  
 2 Q. Do you have any explanation as to why there  
 3 would be two notes of the same date?  
 4 MR. WISEMAN:  
 5 A. Information--in that kind of discussion and  
 6 the information is being updated, you know,  
 7 throughout the day, I mean, it wouldn't be  
 8 uncommon if there had been three or four. I  
 9 wouldn't have been surprised if that happened.  
 10 MS. CHAYTOR:  
 11 Q. So that happens sometimes?  
 12 MR. WISEMAN:  
 13 A. If there's an issue that's, you know--new  
 14 information is coming forward on it and it's a  
 15 topical issue that is being talked about as we  
 16 speak. So, if someone updates a briefing note  
 17 in the morning to reflect what they currently  
 18 understand at that point, and by mid afternoon  
 19 something changes and you're still using a  
 20 briefing note as your point of reference, then  
 21 it wouldn't be uncommon for that to happen.  
 22 MS. CHAYTOR:  
 23 Q. Okay.  
 24 THE COMMISSIONER:  
 25 Q. Is this a convenient -

Page 361

1 MS. CHAYTOR:

2 Q. This is indeed because I'm about to look at  
3 those two briefing notes and that may take  
4 some time.

5 MS. CHAYTOR:

6 Q. All right then, we'll break then until  
7 tomorrow morning at 9:30.

8 MS. CHAYTOR:

9 Q. Thank you, Commissioner.

10 MS. CHAYTOR:

11 Q. Thank you.

12 Upon conclusion at 4:45 p.m.

Page 362

1 CERTIFICATE

2 I, Judy Moss, hereby certify that the foregoing is  
3 a true and correct transcript in the matter of the  
4 Commission of Inquiry on Hormone Receptor Testing,  
5 heard on the 10th 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 10th day of April, A.D., 2008  
13 Judy Moss

<p style="text-align: center;"><b>-&amp;-</b></p> <hr/> <p><b>&amp;</b> [1] 194:5</p> <hr/> <p style="text-align: center;"><b>-?-</b></p> <hr/> <p><b>'05</b> [7] 33:11 256:21,23 257:1,23 349:5,24</p> <p><b>'06</b> [27] 5:24 8:14 9:15 28:4 33:17 39:3 40:15 40:16 57:4,5 149:2 188:18,20 214:11,24 224:12 225:7,24 226:1,4 246:1 255:6 256:18,19 257:2 349:5,25</p> <p><b>'07</b> [12] 12:8 97:16 212:15 215:7,9,10 226:2 256:17 257:3 258:2 293:24 349:3</p> <p><b>'08</b> [1] 214:12</p> <hr/> <p style="text-align: center;">---</p> <hr/> <p><b>-and</b> [1] 326:12</p> <p><b>-I</b> [2] 81:4 162:17</p> <p><b>-not</b> [1] 350:8</p> <p><b>-that</b> [1] 298:22</p> <p><b>-what</b> [1] 20:25</p> <p><b>-you</b> [1] 154:6</p> <hr/> <p style="text-align: center;"><b>-0-</b></p> <hr/> <p><b>0077</b> [1] 219:24</p> <p><b>0277</b> [2] 219:25,25</p> <p><b>0314</b> [2] 18:9 58:1</p> <p><b>049</b> [1] 209:2</p> <hr/> <p style="text-align: center;"><b>-1-</b></p> <hr/> <p><b>1</b> [1] 350:5</p> <p><b>10</b> [7] 1:4 4:16 18:9 43:12 58:2 212:22 220:15</p> <p><b>100</b> [1] 9:18</p> <p><b>101</b> [25] 5:11,14 6:25 7:3 38:24 40:3,14 41:14,19 41:25 42:2,12,15 43:1,3 43:10,15,21,23 45:19,20 46:9 54:1,5 247:4</p> <p><b>104</b> [4] 19:13,17 49:2 288:12</p> <p><b>10th</b> [2] 362:5,12</p> <p><b>11</b> [2] 8:24 349:1</p> <p><b>117</b> [4] 19:12 171:24 172:2 238:18</p> <p><b>11:00</b> [1] 89:24</p> <p><b>11th</b> [4] 55:5 145:7 146:5 146:21</p> <p><b>12</b> [2] 47:23,23</p> <p><b>12:00</b> [1] 272:7</p> <p><b>12th</b> [3] 37:12 40:13 57:5</p> <p><b>13</b> [2] 2:3,4</p> <p><b>13th</b> [1] 207:4</p> <p><b>14th</b> [1] 36:8</p> <p><b>15</b> [5] 344:20 348:24,25 350:3 356:24</p> <p><b>15th</b> [62] 33:21 34:6,8,17</p>	<p>36:6,8 117:6 137:1,2,21 137:24 140:2,15 149:11 154:16,22 155:10 165:2 165:5,6 166:14 172:17 180:2 182:2 186:2 196:6 198:1 199:4 217:23 218:4 219:7 228:18 232:6,8 239:13 244:18 247:10 248:1,5 250:15,20 253:3 258:2 260:21 275:8,22 283:21 285:4 287:17 291:3 294:9 296:25 304:9 308:3 316:5,21 320:5 324:19 328:9 329:20 330:1 344:13</p> <p><b>15th's</b> [1] 238:24</p> <p><b>16</b> [9] 39:11 213:6 345:5 348:19 352:25 356:19 358:15 359:14,21</p> <p><b>16th</b> [19] 140:7 165:2 245:1 248:5 249:21 316:16 319:4 320:6 321:5 321:13 324:19 329:20 330:1 345:7,14,16 347:5 356:24,24</p> <p><b>17</b> [1] 351:6</p> <p><b>176</b> [2] 43:21 247:4</p> <p><b>17th</b> [7] 140:7,7 324:7 329:20 330:2 356:24 358:10</p> <p><b>18</b> [1] 9:3</p> <p><b>18th</b> [9] 11:18 12:14 17:16 22:18 23:2,19,23 48:11 253:4</p> <p><b>19</b> [2] 206:17 207:15</p> <p><b>1985</b> [3] 62:13 63:8,19</p> <p><b>1995</b> [3] 63:8,11,19</p> <p><b>1997</b> [8] 52:5 184:24 235:11 236:6 297:21 319:21 333:18 350:7</p> <p><b>19th</b> [16] 70:12 91:16 150:21 151:7,10,11 169:16 170:16,16 172:9 189:15 197:24 211:1 218:3 253:4 273:8</p> <p><b>1:30</b> [3] 150:4 239:15 272:3</p> <p><b>1st</b> [7] 76:7 83:7 93:2,2 173:6,22 187:16</p> <hr/> <p style="text-align: center;"><b>-2-</b></p> <hr/> <p><b>2</b> [1] 212:19</p> <p><b>2,760</b> [5] 235:11 236:13 236:15,20 237:9</p> <p><b>20</b> [1] 207:22</p> <p><b>2000</b> [6] 62:1,12,13 63:12 65:6 301:6</p> <p><b>2001</b> [1] 65:13</p> <p><b>2003</b> [6] 62:3 65:18 66:10 73:9,17 74:2</p> <p><b>2004</b> [3] 52:6 333:19 334:11</p> <p><b>2005</b> [28] 84:1 89:18 99:11,21 101:5,24 139:4 184:25 205:19 235:11 236:6 263:24 269:16,19</p>	<p>269:20 273:24 274:3,19 275:5 276:20 319:22 333:18 349:1,19 350:7 355:6 356:3 357:3</p> <p><b>2006</b> [50] 4:17 16:7,9 22:19 23:2 32:3,10,11 33:9 35:4 36:2 37:12 38:1,7,13,22 54:24 55:5 57:1 83:9 127:11,12 145:7 146:5,21 156:17 160:25 163:19 164:18 204:23,25 206:8,13 207:13 209:14,18 220:21 225:22 226:14 241:23 248:17 264:18,21,22 269:22 349:1 355:22 356:4 358:5,17</p> <p><b>2007</b> [81] 23:19 62:7,9 70:13 79:16 90:23 91:8 91:16,22 92:21 97:2,19 97:21,22 117:8,10 122:6 127:17 131:17 137:25 140:2,11,13,15 142:23 142:24 151:7,9,10,11 166:3,3,14 169:16 170:16 171:9,15 173:6,15,22 187:16 198:1 205:10 210:19 211:2,5,14 214:13 214:25 218:16 220:13 221:8,25 223:22,23 226:20 243:21 248:1 263:24 273:8 283:21 285:4 287:17 292:22 293:2 294:9 298:13 308:3 328:9 341:16 344:20 349:20 350:4,6 351:12 351:19 352:1,4,8,18 354:5</p> <p><b>2008</b> [5] 1:4 214:17 292:11 362:5,12</p> <p><b>213</b> [1] 48:21</p> <p><b>21st</b> [1] 209:14</p> <p><b>22nd</b> [1] 336:20</p> <p><b>23rd</b> [21] 4:17 6:15 9:15 18:7 32:3 35:4 37:4 39:18 41:3 42:1,2,5,10 43:20 44:4 45:25 50:3,5 54:1 55:19 57:1</p> <p><b>24</b> [1] 213:22</p> <p><b>24th</b> [1] 209:18</p> <p><b>25</b> [2] 2:4,5</p> <p><b>26th</b> [3] 210:19 211:5,14</p> <p><b>27th</b> [1] 57:4</p> <p><b>28</b> [1] 47:22</p> <p><b>2nd</b> [5] 99:20 205:19 206:8 207:11 298:3</p> <hr/> <p style="text-align: center;"><b>-3-</b></p> <hr/> <p><b>3</b> [2] 212:5 288:1</p> <p><b>3-4</b> [1] 58:3</p> <p><b>300</b> [2] 89:1,3</p> <p><b>307</b> [1] 288:10</p> <p><b>30th</b> [5] 206:13 220:21 224:12 225:22 226:14</p> <p><b>31</b> [1] 214:4</p> <p><b>31st</b> [8] 57:13 206:13 218:14,16 220:13 221:8</p>	<p>226:20 228:14</p> <p><b>32</b> [3] 207:16 209:5 214:14</p> <p><b>33</b> [1] 214:18</p> <p><b>34</b> [1] 235:15</p> <p><b>341</b> [1] 47:21</p> <p><b>35</b> [1] 10:6</p> <p><b>36</b> [1] 215:1</p> <p><b>37</b> [1] 215:10</p> <hr/> <p style="text-align: center;"><b>-4-</b></p> <hr/> <p><b>4</b> [1] 2:3</p> <p><b>40</b> [1] 215:17</p> <p><b>433</b> [2] 47:13 49:7</p> <p><b>44</b> [2] 298:17,19</p> <p><b>44-45</b> [1] 87:11</p> <p><b>44/45</b> [1] 110:3</p> <p><b>46</b> [1] 215:21</p> <p><b>47</b> [1] 215:25</p> <p><b>48</b> [1] 216:4</p> <p><b>49</b> [3] 206:16,17 216:9</p> <p><b>4:45</b> [1] 361:12</p> <hr/> <p style="text-align: center;"><b>-5-</b></p> <hr/> <p><b>5</b> [1] 316:11</p> <p><b>51</b> [1] 216:16</p> <p><b>52</b> [3] 211:21 216:22 223:4</p> <p><b>5:30</b> [1] 316:11</p> <hr/> <p style="text-align: center;"><b>-6-</b></p> <hr/> <p><b>61</b> [3] 2:5,7 3:2</p> <hr/> <p style="text-align: center;"><b>-7-</b></p> <hr/> <p><b>73</b> [10] 5:12,14 39:19,23 40:22 41:9,20 42:16,20 247:7</p> <p><b>763</b> [2] 47:8 49:4</p> <p><b>7th</b> [1] 293:2</p> <hr/> <p style="text-align: center;"><b>-8-</b></p> <hr/> <p><b>8</b> [2] 169:18 212:10</p> <hr/> <p style="text-align: center;"><b>-9-</b></p> <hr/> <p><b>9</b> [3] 219:18,19,19</p> <p><b>900</b> [1] 301:5</p> <p><b>939</b> [9] 39:5,8,16,17 50:16 235:13 237:13 238:17 247:3</p> <p><b>9:30</b> [1] 361:7</p> <p><b>9th</b> [5] 142:23 143:16 151:9 171:9,14</p> <hr/> <p style="text-align: center;"><b>-A-</b></p> <hr/> <p><b>A.D</b> [2] 362:5,12</p> <p><b>Abbott</b> [37] 11:7 17:13 23:5 91:11,16 92:20 93:15 105:19,20 106:10 107:18,22 149:22 151:5</p>	<p>157:5 159:17 160:10 161:5,16 163:16 164:2 164:16 166:14 167:18 227:19,21 228:24 243:18 245:24 317:10,21,22 318:9 319:25 321:9 329:15 344:23</p> <p><b>Abbott's</b> [2] 94:8 106:6</p> <p><b>ability</b> [2] 75:13 362:9</p> <p><b>able</b> [41] 13:19 77:1,12 79:8 86:6 92:11 109:3 112:22 113:15,17 114:6 116:20 119:4,10 136:1 156:5 181:9 183:20 185:4 185:6 186:11 187:16 193:17 202:18 203:6 234:8 247:18,21 275:20 276:7 281:4 282:8 292:11 300:11,18,18 323:15 339:2 340:14 341:11 353:8</p> <p><b>absence</b> [4] 156:10 338:17 341:13 343:6</p> <p><b>absolutely</b> [8] 8:10 15:21 16:14 17:3 20:14 21:15 108:5 169:24</p> <p><b>absorb</b> [2] 282:8 284:7</p> <p><b>Academically</b> [1] 62:22</p> <p><b>accented</b> [2] 83:8,10</p> <p><b>acceptable</b> [1] 21:23</p> <p><b>accepted</b> [2] 217:13 252:1</p> <p><b>access</b> [2] 228:2 266:19</p> <p><b>accessing</b> [1] 214:6</p> <p><b>accommodate</b> [2] 136:1 282:25</p> <p><b>accomplished</b> [1] 121:15</p> <p><b>according</b> [4] 38:14 142:25 236:21 243:9</p> <p><b>accountability</b> [3] 78:19 82:19 212:24</p> <p><b>accountable</b> [1] 75:18</p> <p><b>accreditation</b> [6] 198:25 215:17 292:13,14 293:16 294:6</p> <p><b>Accuracy</b> [1] 215:17</p> <p><b>accurate</b> [3] 245:7 288:17 302:7</p> <p><b>accurately</b> [1] 297:5</p> <p><b>acknowledge</b> [1] 131:24</p> <p><b>acknowledged</b> [2] 117:19 341:17</p> <p><b>acknowledging</b> [1] 134:3</p> <p><b>act</b> [5] 78:19 83:6 84:11 84:12 85:16</p> <p><b>acted</b> [1] 172:15</p> <p><b>action</b> [9] 1:14 4:12 118:2 120:6 141:12,20 217:1 228:19 266:6</p> <p><b>actions</b> [3] 141:9 255:20 352:8</p> <p><b>active</b> [1] 98:17</p> <p><b>activity</b> [4] 67:9 79:25</p>
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Inquiry on Hormone Receptor Testing

<p>111:5 177:24  <b>actual</b> [7] 50:19 88:7          131:21 134:1 222:18          240:20 281:9  <b>acute</b> [1] 87:14  <b>acutely</b> [3] 194:9,16          344:19  <b>add</b> [1] 180:17  <b>added</b> [4] 12:18 19:7          133:2 152:10  <b>adding</b> [2] 183:9,12  <b>addition</b> [6] 16:14 81:3          88:14 208:3 274:13 348:4  <b>additional</b> [12] 9:9          123:24 125:21 126:11,20          127:14 130:18 131:18          133:14 170:9 282:11          287:6  <b>address</b> [3] 275:21          283:14 308:3  <b>addressed</b> [4] 35:23          41:19 278:7 309:17  <b>addressing</b> [4] 9:8          198:15 308:11 309:18  <b>adequate</b> [4] 233:4 281:4          335:21,21  <b>adequately</b> [2] 340:3,7  <b>Adjacent</b> [1] 100:7  <b>ADJOURNED</b> [1]          197:14  <b>adjustment</b> [1] 133:23  <b>ADM</b> [12] 17:15 95:14          95:22 108:7 109:7,19          110:7 111:1,2,10 171:5          251:20  <b>administrative</b> [1] 75:8  <b>administration</b> [5]          62:24 88:6 230:7 293:8          330:20  <b>administrative</b> [2] 64:1          64:4  <b>ADMs</b> [2] 110:10 112:7  <b>advance</b> [2] 159:24          350:15  <b>adverse</b> [6] 191:11          192:25 298:6 309:19          310:3,9  <b>advice</b> [34] 185:13,16          188:20 230:18 253:20          254:3,7,15 255:19 256:2          256:13 257:8,9,18 258:3          262:10,19 263:5,7,12,13          263:15,16,18 264:23          265:10,13,20 266:1,4,22          268:25 355:7,13  <b>advise</b> [5] 6:11 136:20          253:12 254:1 261:8  <b>advised</b> [6] 46:9 94:3          184:9 222:22 329:11,15  <b>affairs</b> [2] 294:11 343:21  <b>affect</b> [1] 77:19  <b>affected</b> [7] 37:2 44:24          261:22 276:13 288:8          295:14 349:6  <b>afraid</b> [1] 56:18</p>	<p><b>afternoon</b> [6] 165:7          197:18,21 268:6 316:8          360:18  <b>afterwards</b> [3] 244:20          246:13 299:20  <b>again</b> [57] 9:5 10:3 18:8          20:11 25:5 56:17 58:2          69:7,19 84:22 101:3          116:16 119:24 141:15          146:17 151:8 160:18          165:8 170:13 182:3          190:14 194:7 213:1 214:6          214:14,19 215:2,8,18,22          216:1,7,13 217:13 236:3          269:14 286:17 287:13          289:18 291:1 292:17          295:5,12,24 296:7 300:3          305:17,23 306:4 310:23          317:17,19,24 344:7,10          354:4,7  <b>against</b> [2] 51:17 52:4  <b>Agencies</b> [1] 23:20  <b>agency</b> [1] 291:18  <b>aging</b> [2] 67:13 68:6  <b>ago</b> [11] 72:8,10 117:21          196:12 227:7 234:3          250:12 291:2 297:4          306:19 349:13  <b>agree</b> [6] 198:5 211:25          212:13 269:17,20 355:17  <b>agreed</b> [8] 212:2 213:3          213:17 214:8 216:2,8,13          216:19  <b>agreement</b> [8] 128:21          212:8 214:3,16,20 215:4          215:20,23  <b>agrees</b> [1] 215:13  <b>ahead</b> [3] 28:14,20 209:8  <b>akin</b> [2] 185:17 231:23  <b>al</b> [1] 1:10  <b>alarm</b> [1] 263:21  <b>alarming</b> [1] 285:21  <b>alerted</b> [4] 141:10 154:21          163:24 217:18  <b>aligns</b> [1] 88:12  <b>alive</b> [1] 22:1  <b>allocated</b> [2] 282:5,9  <b>allocation</b> [3] 131:22          132:24 133:15  <b>allow</b> [8] 32:6 35:6          174:19 188:11 189:17          190:16 198:8 292:23  <b>allowance</b> [1] 282:11  <b>almost</b> [4] 69:2 80:19          169:19,25  <b>alone</b> [1] 168:10  <b>along</b> [9] 7:12 17:2 30:23          87:19 204:22 205:25          209:11 210:13 226:15  <b>altogether</b> [1] 243:6  <b>always</b> [8] 56:18 102:14          252:24 296:1 311:23          352:10,15,17  <b>amount</b> [2] 113:18          274:13</p>	<p><b>amounts</b> [1] 282:7  <b>analysis</b> [10] 31:18 50:23          50:24 51:23 52:5 55:3          56:13 57:20,23 286:4  <b>analyzed</b> [1] 36:22  <b>anecdotally</b> [2] 260:10          296:20  <b>annex</b> [1] 235:19  <b>announced</b> [2] 122:2          309:18  <b>announcement</b> [4]          21:12 133:6 309:24          324:12  <b>announcing</b> [1] 323:3  <b>annual</b> [5] 79:11,16 80:7          80:13 82:8  <b>answer</b> [46] 9:7 79:6          83:13 127:21 134:20          180:12 194:25 195:1          196:16 203:17 204:12          222:8 245:22 247:16          280:19 285:25 287:15          288:21 296:24 297:2          302:16 306:4 308:12          310:5,13,19 311:2,23,25          312:4,18,23 313:7 325:13          325:18,22,24 328:2          331:21 335:21 336:1          337:25 344:7 350:8,9,11  <b>answered</b> [2] 24:13 59:2  <b>answering</b> [6] 74:22          181:24 196:25 308:18          310:25 311:22  <b>answers</b> [10] 25:2 56:18          182:12,22 194:23 320:10          327:2 332:21 349:12,23  <b>antibodies</b> [2] 208:23          213:14  <b>antibody</b> [1] 212:6  <b>anticipate</b> [1] 282:18  <b>anticipated</b> [3] 172:3          194:5 280:24  <b>anticipation</b> [2] 7:7 9:6  <b>anxiety</b> [1] 274:12  <b>anyway</b> [3] 28:15 163:3          246:8  <b>apart</b> [2] 223:10 269:5  <b>apparatus</b> [1] 362:10  <b>apparent</b> [7] 165:14,16          180:1,20 182:9 260:9,15  <b>appeal</b> [1] 355:9  <b>appear</b> [1] 210:2  <b>Appearances</b> [1] 1:5  <b>appeared</b> [2] 128:24          245:25  <b>appended</b> [1] 55:4  <b>application</b> [1] 126:9  <b>applies</b> [1] 78:19  <b>appointed</b> [6] 62:4,7          65:14 75:7 89:17 97:20  <b>appointment</b> [2] 91:11          94:20  <b>appoints</b> [1] 93:9  <b>appreciate</b> [15] 30:22          42:18 44:16 46:13 55:4</p>	<p>59:14,22 165:3 253:3          271:24 277:12 296:19          322:8 341:15 351:11  <b>apprised</b> [1] 107:23  <b>approach</b> [3] 49:24          267:2 269:9  <b>approached</b> [1] 115:1  <b>appropriate</b> [22] 122:25          164:7 173:7 174:18          178:16,19 183:8,10 195:1          195:7 215:25 216:5 263:2          274:21,25 275:4,12          276:17 306:20,25 307:9          352:23  <b>appropriately</b> [1]          349:21  <b>approval</b> [3] 24:1 64:17          89:7  <b>approved</b> [9] 23:5,12          23:15,21 144:9 171:1          190:2 196:7 243:19  <b>April</b> [32] 1:4 35:3 62:1          76:7 83:7 150:18,21          151:7,9,11 166:3 169:16          170:16,16 172:9 189:15          197:24 209:18 210:19          211:1,4,14 214:13,25          215:8 218:2 221:25          243:21 273:8 292:10          362:5,12  <b>area</b> [20] 62:14 63:6          106:8 114:13,23 119:16          144:8 180:18 185:24          228:5,6,11 231:1,20          286:8 287:7 291:19          292:19 343:15,17  <b>areas</b> [1] 70:2  <b>argument</b> [7] 7:23 8:1,1          8:2,5 268:13,15  <b>arise</b> [4] 74:11 193:18          307:20 343:22  <b>arisen</b> [1] 242:8  <b>arising</b> [3] 25:12 149:5          349:19  <b>arose</b> [4] 138:3 256:20          256:23 313:1  <b>arranged</b> [1] 167:18  <b>arrival</b> [2] 91:6 157:17  <b>arrive</b> [4] 49:15 55:1          56:6 136:15  <b>arrived</b> [5] 36:6,7 59:2          91:15 338:21  <b>arriving</b> [1] 26:14  <b>articulate</b> [2] 181:10          304:23  <b>articulated</b> [1] 84:20  <b>aside</b> [3] 16:10 46:13,14  <b>aspect</b> [4] 26:21 28:8          52:25 282:1  <b>aspects</b> [2] 126:7 183:4  <b>assembled</b> [2] 137:14          169:6  <b>Assembly</b> [18] 14:1 62:1          115:21 116:3,21 150:4          165:6 231:15 234:5          254:23 272:3,21 275:21</p>	<p>277:21 291:5 299:6          322:14 346:6  <b>asserting</b> [1] 287:18  <b>assertions</b> [1] 290:24  <b>assess</b> [3] 208:2 213:23          216:10  <b>assessment</b> [4] 31:12          283:9 287:22 353:21  <b>assigned</b> [2] 98:5 179:20  <b>Assistant</b> [7] 63:8 77:23          93:11 106:12 109:12          149:18 169:3  <b>associated</b> [1] 233:3  <b>Association</b> [1] 1:15  <b>assume</b> [5] 204:15 226:9          317:10 332:12 339:25  <b>assumed</b> [5] 7:18 70:11          138:10 142:7 204:19  <b>assuming</b> [3] 9:1 79:15          141:24  <b>assumption</b> [8] 49:16          84:4 175:10,13 255:21          256:10 310:11 341:4  <b>assurance</b> [19] 123:24          124:13 179:2 180:15          181:17 183:7,14 185:13          207:14 227:4 286:14          289:2,14,20,22 291:11          326:5 334:18 341:2  <b>assure</b> [1] 187:17  <b>assured</b> [4] 186:14          287:11 289:15 299:13  <b>attached</b> [3] 220:13          235:19,20  <b>attempts</b> [2] 181:3,4  <b>attend</b> [7] 67:25 68:3,12          68:18 99:3 101:6 155:24  <b>attended</b> [1] 69:14  <b>attending</b> [1] 67:6  <b>attention</b> [56] 12:9 26:22          64:7,17,21,23 65:23          116:25 118:2,23 120:1,7          124:21 125:23 137:2          138:25 139:15,16 141:4          141:8,11 142:2,9,10          144:2,13,14,21 145:1,8          149:13 151:12,18,22,25          153:7,9,11 154:25 155:9          159:22 160:23 167:17          173:21 212:16 220:16          225:5 233:1,1,2 240:5          246:19 253:11 261:24          285:6 306:11  <b>attract</b> [1] 234:9  <b>attribute</b> [1] 187:11  <b>August</b> [8] 11:17 12:14          17:16 22:18 23:2,18,23          48:11  <b>authorities</b> [56] 1:18          75:1,23,24 76:1,9,22          78:15,20 79:17 80:16,25          81:10,12 82:9 83:6,25          84:11,23 85:6,7,15 88:10          88:13,20 89:4,4 109:23          110:5,15,17,22 111:4,21          112:4 120:12,19,24          121:12,21 122:8 123:22</p>
--	--	--	--	---

<p>123:25 124:17 125:2 126:6,11,19 127:4,13,24 129:9,18 130:22 245:12 354:24</p> <p><b>authority</b> [19] 1:12 76:5 76:13,20 82:1 85:5,25 86:7,14 89:19 111:8,11 124:5 126:4 128:5 161:24 245:14,17 285:19</p> <p><b>automatically</b> [1] 359:23</p> <p><b>available</b> [11] 5:7,21 21:20 157:14 161:11 182:15 246:2 254:21 283:14 330:11,13</p> <p><b>avenues</b> [1] 338:4</p> <p><b>awaiting</b> [1] 39:11</p> <p><b>aware</b> [77] 9:23 12:9 17:17 23:7 24:7 55:12 55:14 56:11,14,17,21,23 70:18,19,25 71:2,21,24 72:4 83:21 84:2 106:18 108:21 109:11 122:6,14 122:19 123:3,20,25 126:18 139:3 146:13 148:7,20 161:9,12 163:18 164:17,21,22 165:11,18 165:20 166:9,13 167:2 187:21,23 188:4,6 194:10 194:17 217:23 238:6 249:4 253:5 278:21 279:1 279:7 286:19,25 290:14 300:21 303:11 305:19 310:1,6,7,10,12 315:17 315:23 333:13,21 344:19 358:6</p> <p><b>away</b> [4] 9:11 157:10 261:22 334:12</p> <p><b>awry</b> [1] 338:12</p> <hr/> <p style="text-align: center;"><b>-B-</b></p> <hr/> <p><b>b</b> [5] 28:20,23 208:21 210:21 214:8</p> <p><b>background</b> [10] 37:18 61:23 156:15 234:18,19 235:4 239:19 330:19 331:12 342:18</p> <p><b>backwards</b> [1] 341:11</p> <p><b>Ball</b> [3] 285:7,14 288:3</p> <p><b>Banerjee</b> [11] 31:24 35:5 209:10,11,25 211:23 212:7,13,17,19,21</p> <p><b>Banerjee/Trish</b> [2] 210:18 220:19</p> <p><b>banking</b> [1] 62:19</p> <p><b>Barry</b> [1] 215:5</p> <p><b>base</b> [8] 133:24 282:9,15 282:16,19,20,21,24</p> <p><b>based</b> [13] 32:15 121:20 129:2 163:17 203:7 262:9 263:19 284:12 291:6 299:6,15 303:14 330:9</p> <p><b>basis</b> [9] 55:2 56:12 69:2 92:11 98:22 147:19 264:23 287:10 288:16</p> <p><b>bear</b> [4] 179:8 211:1 214:12 240:4</p>	<p><b>bearing</b> [2] 215:8 217:16</p> <p><b>became</b> [29] 13:13 14:16 14:18 59:4 97:16 99:11 103:20 107:10 112:17 113:10 117:10 120:10 136:13 139:3,6,21 145:17 161:8,12 165:7 179:25 180:20 260:8 303:11 319:13 322:11 333:13,21 352:3</p> <p><b>become</b> [23] 66:5 70:18 71:2 90:19 102:17 104:5 107:13 109:15 121:17 123:3 154:22 163:2 164:16 165:11 180:22 194:9,12,16 208:8 217:18 300:21 344:19 348:24</p> <p><b>becomes</b> [3] 182:9 266:18 351:19</p> <p><b>becoming</b> [7] 27:21 104:9 105:21 106:14 108:13 253:5 284:21</p> <p><b>beefing</b> [1] 183:6</p> <p><b>beforehand</b> [1] 138:1</p> <p><b>begin</b> [1] 61:22</p> <p><b>beginning</b> [5] 42:18 128:18 267:24 276:19 343:10</p> <p><b>begins</b> [1] 171:7</p> <p><b>begun</b> [2] 172:1 207:25</p> <p><b>behalf</b> [11] 4:11 67:6,7 141:12 192:3 193:9 265:6 277:23 278:3 350:21,22</p> <p><b>belief</b> [2] 10:3 275:11</p> <p><b>believing</b> [1] 16:15</p> <p><b>bene</b> [1] 359:23</p> <p><b>benefit</b> [4] 21:25 292:10 293:11,19</p> <p><b>Bernard</b> [3] 1:6 2:5 25:15</p> <p><b>best</b> [13] 19:12 27:10 29:18 31:17 75:13 130:12 130:14 172:15 184:14 185:23 251:1 341:5 362:9</p> <p><b>Beth</b> [1] 66:11</p> <p><b>better</b> [20] 7:25 30:12 103:21 119:14,23 182:19 190:6 212:24 243:10 264:4 272:2,5 273:6 315:2 322:7 326:1 335:10 335:15,25 350:18</p> <p><b>between</b> [22] 20:24 63:11 79:9 80:15,21 83:9 85:22 97:21 110:13 122:22 129:9 137:23 163:23 164:1 184:24 193:5 214:11 226:1 293:20 319:21 344:13 350:6</p> <p><b>Beverley</b> [2] 170:20,21</p> <p><b>beyond</b> [6] 73:23 128:11 218:2 250:23 288:7 324:2</p> <p><b>big</b> [2] 87:21 273:19</p> <p><b>bigger</b> [3] 167:16 220:1 286:1</p> <p><b>biggest</b> [1] 113:24</p> <p><b>binder</b> [7] 105:2,6,7</p>	<p>112:15,19 116:23 169:15</p> <p><b>bit</b> [10] 12:9 87:4 112:25 113:12 181:25 217:15 234:23 273:5 321:20 340:8</p> <p><b>blame</b> [1] 179:20</p> <p><b>block</b> [4] 50:20 63:20 216:6 282:4</p> <p><b>blocks</b> [1] 50:19</p> <p><b>board</b> [18] 38:7 62:14 63:6 81:7 83:19 89:5,21 95:14 106:8,19 108:7 109:19 110:7 111:23 122:24 131:11 149:19 171:6</p> <p><b>board's</b> [1] 38:14</p> <p><b>boards</b> [2] 109:25 110:13</p> <p><b>Bob</b> [1] 205:18</p> <p><b>bodies</b> [2] 78:24 79:4</p> <p><b>body</b> [2] 286:20 292:14</p> <p><b>Bonnell</b> [1] 168:19</p> <p><b>book</b> [36] 13:15 14:14 61:6 72:24 73:10,17,18 73:21 99:5 105:12 112:17 115:10,14 116:18 117:17 118:5 136:15,16 138:22 138:23 139:9 140:22 142:12,20 143:2,7,10 144:11,15,20 145:14,17 145:19 157:23 171:10 211:15</p> <p><b>books</b> [4] 60:25 73:14,23 116:15</p> <p><b>bothersome</b> [1] 182:17</p> <p><b>bottom</b> [4] 9:3 18:19 43:19 207:23</p> <p><b>bound</b> [1] 195:3</p> <p><b>boundaries</b> [1] 288:7</p> <p><b>breadth</b> [1] 87:21</p> <p><b>break</b> [11] 49:4 60:9,10 60:16 89:25 90:10 154:16 197:8,13 284:6 361:6</p> <p><b>breaking</b> [1] 100:21</p> <p><b>breakout</b> [1] 48:25</p> <p><b>breaks</b> [2] 47:17 149:12</p> <p><b>breast</b> [14] 1:13 4:11 26:10 171:25 172:4,6,7 173:9 178:18 229:24 235:16 289:10 303:9 313:17</p> <p><b>brevity</b> [1] 246:7</p> <p><b>Brian</b> [2] 347:12 353:17</p> <p><b>brief</b> [12] 28:3 150:9 155:20 156:3 157:17 159:22 160:14 164:8 239:6 246:7 345:11 346:16</p> <p><b>briefed</b> [8] 13:20 14:22 15:7 69:4 137:25 240:13 247:10 275:8</p> <p><b>briefing</b> [229] 4:16 5:23 6:5,11,14,15,17,23 8:25 10:8,10 11:18,23 12:14 13:15,24,25 14:2,3,3,5,6 14:13,13,14 18:7,12 22:4 22:14,21,22 23:9 32:15</p>	<p>32:18,20 33:6,21 34:10 34:11 37:12,16 38:19 39:10 40:13 43:20 48:12 54:17 55:6 57:1,3 59:3 72:24 73:3,3,7,10,14,17 73:18,21,23 74:10,10 99:5 103:14 105:8,12 109:9 112:17,18 115:10 115:14,15,19,20 116:10 116:15,18,23 117:14,22 118:5 136:13,14,15,16 138:22,23 139:9,22 140:22 142:12,13,17,20 142:22,24 143:2,3,10,12 143:16 144:5,7,11,14,17 144:20,24 145:6,14,17 145:18,21 146:22 149:6 150:13,14,18 151:6,8,16 151:21 155:15 156:16 157:22 158:9,12,14,17 159:1,2 162:7,13,24 165:24 169:15,18 170:10 171:6,9 172:17 175:2 178:5,7,13 179:17 182:16 188:9 189:13 190:9 193:20,21 194:3,11,14 195:6,24,25 196:7,21 197:24 198:1,2,19 199:4 211:1 217:17,19 218:2 225:12,16 226:12 229:9 234:19 236:22 239:18 240:13,20,24,25 241:13 241:16 242:3,20,24 243:3 243:14,19 244:3,9,14,22 245:25,25 255:2 258:6 258:13 259:8,11,16,23 259:24 264:22 270:5,24 271:7 272:24 273:1,7,7 274:5 275:13,16 291:3,7 297:3,12 299:15 317:13 318:3 333:12,20 351:7 359:19,20 360:16,20 361:3</p> <p><b>briefings</b> [14] 13:14,17 13:24 14:9,24 22:6,13 22:13 69:15 101:6 172:25 314:5,6,6</p> <p><b>bring</b> [21] 4:15 29:15 31:22 33:23 34:3 37:10 43:12 77:10,24 78:8 129:6 157:23 160:3 167:18 173:20 232:2 253:10 285:5 306:10 324:24 335:2</p> <p><b>bringing</b> [5] 126:23 220:16 243:5 267:14 353:12</p> <p><b>brings</b> [3] 87:14 149:12 351:6</p> <p><b>broad</b> [5] 76:19,21,24 79:25 80:22</p> <p><b>broad-encompassing</b> [1] 87:17</p> <p><b>broader</b> [4] 77:18 84:21 85:11 158:23</p> <p><b>broke</b> [3] 99:20 272:12 354:4</p> <p><b>broken</b> [2] 48:5 57:22</p> <p><b>brought</b> [32] 26:21 118:23 120:1,7 124:21</p>	<p>125:23 139:15 141:3 144:1,14,21,25 145:8 151:12,17,21,24 153:6,9 153:11 155:8 160:22 167:16 178:15 179:8 225:5 227:10 240:5 246:18 255:14 330:16 350:16</p> <p><b>Browne/Jane</b> [1] 1:10</p> <p><b>budget</b> [65] 87:6 110:2 113:11,14,17,25 114:5 120:9,20,22 121:8 122:1 122:5,9 123:12,18 124:1 125:3 126:19,25 127:16 127:23 128:11 129:16 130:2 131:4,5,8,14,17 132:1,13,18,20,22,25 133:3,3,6,11,13,14,17 133:18,24 134:5,13 135:7 135:8,16 280:16,17,25 281:1,3,7,10,19,23 282:1 282:4,15,18,22 283:15</p> <p><b>budget's</b> [1] 132:13</p> <p><b>budgetary</b> [13] 76:25 77:16 113:6,8 119:5 123:7,21 124:20 125:24 126:13 132:17 134:2 282:14</p> <p><b>budgeting</b> [2] 120:10 122:16</p> <p><b>build</b> [2] 317:24 319:7</p> <p><b>building</b> [4] 120:22 127:22 278:12 318:18</p> <p><b>builds</b> [2] 293:12,18</p> <p><b>bulk</b> [2] 110:1,4</p> <p><b>bullet</b> [21] 37:22 172:11 173:4 178:14 179:17 184:1 188:9 193:24 198:4 198:21 201:8,15 229:11 229:18 232:12 233:7 235:9,10 247:3 253:10 261:7</p> <p><b>bullets</b> [1] 232:14</p> <p><b>bunch</b> [1] 128:17</p> <p><b>burner</b> [1] 14:8</p> <p><b>burning</b> [1] 119:22</p> <p><b>business</b> [1] 62:23</p> <hr/> <p style="text-align: center;"><b>-C-</b></p> <hr/> <p><b>c</b> [3] 28:20,23 208:21</p> <p><b>Cabinet</b> [37] 10:23 11:5 11:17 23:15 24:6 68:1,2 68:3,7,10,10,12,18,20 75:7 77:9,10,18 78:8 99:4 104:13 114:6 140:6 145:25 155:23 239:7 323:2 324:4 338:20 347:7 347:15 350:19,20 351:7 351:25 353:24 358:10</p> <p><b>calculations</b> [2] 20:10 21:11</p> <p><b>Calibration</b> [1] 215:18</p> <p><b>calls</b> [2] 303:3 304:18</p> <p><b>Cameron</b> [2] 1:3 362:6</p> <p><b>Canadian</b> [1] 1:16</p> <p><b>cancer</b> [16] 1:13,16 4:11</p>
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<p>16:25 26:10 171:25 172:4 172:6,7 173:9 178:18 229:24 235:17 289:10 303:9 313:17 <b>cannot</b> [1] 23:24 <b>capacity</b> [6] 102:4 103:3 107:2 108:19 121:23 135:25 <b>capital</b> [1] 179:9 <b>care</b> [23] 62:15,25 74:25 75:23,24 87:15,15 101:18 106:20 173:9 176:18,19 176:20,24 177:24,24 178:2,18 206:3 288:19 330:20 352:17 357:20 <b>career</b> [1] 105:24 <b>carried</b> [3] 137:7 206:14 285:15 <b>carries</b> [1] 121:7 <b>carry</b> [1] 50:24 <b>carrying</b> [1] 108:23 <b>Carter</b> [1] 214:9 <b>case</b> [12] 22:18 23:23 67:10,23 69:17 70:1 112:7 230:19 234:25 282:23 299:22 320:20 <b>cases</b> [4] 76:24 229:24 236:4 296:11 <b>casual</b> [5] 102:2,3,11,18 102:24 <b>casually</b> [1] 139:11 <b>catch</b> [1] 225:20 <b>categories</b> [1] 121:4 <b>categorized</b> [1] 130:9 <b>category</b> [3] 79:4 129:17 136:7 <b>caught</b> [1] 226:3 <b>causes</b> [2] 217:2 320:4 <b>CBC</b> [1] 354:4 <b>CD-ROM</b> [1] 215:15 <b>centered</b> [1] 274:14 <b>Central</b> [2] 1:17 23:20 <b>centre</b> [23] 16:24 229:23 230:3,8,11,17,23 231:6 231:19 232:4,8 233:14 234:7,10 264:11 286:11 286:18 287:9,19 289:4,9 297:8 301:9 <b>centred</b> [4] 169:14 222:24 239:13 347:22 <b>CEO</b> [17] 80:22 89:6 111:2,10,11,25 150:1 162:3,8,19 163:14 257:5 313:21 338:2,9 344:3,4 <b>CEO's</b> [3] 81:8 89:16,20 <b>CEOs</b> [1] 110:22 <b>certain</b> [24] 20:14 49:24 58:8 77:14 83:2 120:6 123:6,12 131:7 132:16 168:16,25 174:14 189:25 190:2 194:15 233:24 244:4 251:17,20 301:10 317:1 327:17 343:2 <b>certainly</b> [12] 7:7 24:22 24:25 32:10 39:20 60:2</p>	<p>132:4 134:7 145:24 204:23 205:5 258:17 <b>certainty</b> [2] 131:13 246:11 <b>certificate</b> [2] 62:23 362:1 <b>certify</b> [1] 362:2 <b>Chai</b> [1] 1:9 <b>chair</b> [5] 83:19 89:22 107:2,5 111:23 <b>Chairman</b> [1] 106:19 <b>chairs</b> [1] 81:7 <b>challenge</b> [1] 265:24 <b>chance</b> [1] 317:6 <b>chances</b> [2] 171:7 180:8 <b>change</b> [38] 43:23 46:22 47:4,12,13 48:17,18,20 48:21 49:1,2,6,7,18 51:19 52:11,12,14,14,16 53:12,17,18,19,20 54:4 93:11,12,13,20 208:13 247:21 270:19 296:1 320:15 333:5,13 335:2 <b>changed</b> [12] 46:7 48:19 76:6 144:17 152:8 194:15 242:11 326:3 342:1,13 349:6,9 <b>changes</b> [10] 45:6 119:13 152:21 238:18 271:17 334:15,16,22,23 360:19 <b>changing</b> [1] 152:15 <b>characterize</b> [1] 110:20 <b>chat</b> [2] 157:17 323:13 <b>chatted</b> [2] 254:17 314:16 <b>Chaytor</b> [657] 1:7 2:7 60:7,12,20,24 61:2,3,20 63:4,14,22 64:6,12,22 65:5,9,19 66:4,19 67:18 68:11,24 70:4,10,16 71:1 71:12,20 72:5,21 73:2 73:15,25 74:9,17 75:22 76:10 77:4 78:10,23 79:3 79:10,14,20 80:5 81:9 81:13,18 82:7,17,23 83:3 83:15 84:5,10 86:3,11 86:22 87:2 88:21 89:2 89:11,24 90:1,7,8,18,22 91:1,7,14,20 92:2,6,15 92:19 93:3,19,24 94:6 94:21 95:3,9,13,17,21 95:25 96:5,9,14,20 97:1 97:6,10,14,24 98:4,10 98:23 99:19 100:2,10,14 100:19 101:2,11,16,22 102:21 103:1,6,12,19 104:2,10 105:14 106:5 106:21,25 107:8,17,21 108:1,6,11 109:2,13 110:11,16,23 111:6,14 111:18 112:1,9 115:4,12 115:22 116:4,8,22 117:7 117:13 118:4,10,17 119:20 120:8,16 122:4 122:13 123:2,14 124:18 124:25 125:8,18 126:10 127:5,10 129:11,24 130:5 130:11,17,23 131:16</p>	<p>132:2,7,11 134:6,11,19 134:24 136:10,24 137:20 138:7,15 139:20,25 140:10,14,19 141:1,14 142:11,21 143:8,15,21 143:25 144:22 145:4,12 145:23 146:3,16,25 147:24 148:4,10,17,21 149:3,10,21 150:20 151:2 151:15,23 152:16,23 153:3,10,15,19 154:13 154:19 155:3,7,13 156:12 157:3,8,20 158:18 159:4 159:10,15 160:5,9,21 161:3,14,19 162:4 163:4 163:8,15 164:15 165:13 165:17 166:1,12,17,25 167:6,10,14,22 168:2,9 168:18,22 169:8,13,23 170:5,14,19,25 171:4,13 171:18 172:23 173:3,12 173:18 174:2,8,15,22 175:5,22 176:3,9,22 177:4,10,17,22 178:3,12 178:22 179:15 181:7,16 182:24 183:18,24 185:1 185:25 186:19,25 187:5 187:14,24 188:7,21 189:1 189:11 190:22 191:3,7 191:18,23 192:8,13,20 193:12 195:4,12,19 196:3 196:15,22 197:10,16,17 197:22 198:18 199:21 200:1,8,16,23 201:5,14 201:20 202:20 203:10,21 204:3,13,21 205:4,9,17 205:24 206:6,24 207:3,7 210:25 211:9,13,18 213:11 217:5,9 218:1,9 218:15,19,23 219:16,23 220:5,10,25 221:5,11,16 221:20,24 222:3,16 223:3 223:8 224:9,18,23 225:4 225:19 226:5,10,19 227:14,18,22 228:13,23 229:7,17 230:21 231:5,9 232:1 233:6,17,22 234:17 235:2,7,25 236:12,19 237:2,16,21 238:3,10,15 239:21 240:3,10 241:4,9 241:21 242:2,7,14,19 243:16 244:7,19 245:18 246:12,17,23 247:2,24 248:7,13,20,25 249:5,16 249:25 250:6 251:3,9 252:3,8,12 253:1,9,23 254:5 255:10 256:3,11 256:22 257:24 258:10,16 258:21 259:2,6,15,21 260:20 261:6,17 262:2,8 262:13 264:6,14 265:1 265:15,23 266:23 267:11 267:20 269:2,25 270:4,8 270:13,18,22 271:5,19 271:23 272:10,22 273:4 274:2,7,17 275:6,18 277:1,6,11 278:15,20,25 279:5,13,16,19 280:4,11 280:12 281:8,13,17,24 283:3,8,13,18,25 284:18 285:1,11 287:1,25 290:9 290:15,20 291:23 292:4 293:13,21 294:5 295:2</p>	<p>297:23 298:14 299:9,17 300:13 301:13,24 302:4 302:15,20 303:18 304:3 304:14 305:7,15 307:14 308:13,24 309:4,10,25 310:17 311:1,5,9,15 312:10,17,21 313:9 314:13,19 315:6,14,18 315:24 316:4,19 317:8 318:1,8 319:17,23 320:9 321:6,23 323:5,18 324:1 324:6,14,25 325:6,17,21 326:15 327:12,20 328:1 328:7,13,18,23 329:3,14 330:6,18,23 331:4,9,17 332:17 333:8,15,22 334:4 334:19 335:17 336:3,18 337:1,6,10,21 338:24 339:12,20 340:1,20 341:20,25 343:20 344:18 345:4,8,13,17,24 346:9 346:13,18,24 347:11,17 348:9,14,18,22 351:5,10 352:24 353:5,16,25 354:12,16 355:15,20 356:5,12 357:12,17,24 358:3,13,20 359:5,13,18 360:1,10,22 361:1,5,8 361:10 <b>check</b> [1] 280:15 <b>checked</b> [2] 280:18,22 <b>checking</b> [2] 135:2 283:19 <b>Chief</b> [3] 346:17 347:8 347:12 <b>Child</b> [7] 88:1,2 114:13 114:16,21 119:2,7 <b>choice</b> [5] 28:18,24 30:16 266:13 327:3 <b>choices</b> [1] 357:4 <b>choose</b> [1] 263:6 <b>chose</b> [1] 93:17 <b>chronology</b> [6] 37:22 38:17 54:22 235:18,19 276:18 <b>circled</b> [1] 18:21 <b>circles</b> [1] 233:24 <b>circumstance</b> [2] 94:1 135:16 <b>circumstances</b> [1] 15:10 <b>citizen</b> [1] 149:7 <b>Clare's</b> [2] 214:22 215:1 <b>Clareville</b> [9] 62:14 62:17 63:5 70:18,20,21 72:1,7 106:8 <b>clarifies</b> [1] 30:19 <b>clarify</b> [3] 25:18 29:6 47:7 <b>clarifying</b> [1] 203:17 <b>clarity</b> [3] 320:12 327:1 344:8 <b>class</b> [2] 1:14 4:12 <b>clear</b> [26] 6:10 7:22 20:3 20:22 22:5 28:25,25 50:14 84:18 85:4,21 184:25 193:6 198:10 202:21 204:2 245:2</p>	<p>249:13 260:22 269:13 322:11 338:18 343:14 356:16,25 357:6 <b>clearer</b> [1] 180:22 <b>clearly</b> [27] 12:18 84:17 84:20 85:1 86:5 156:24 158:8 164:2 165:9 194:20 203:25 234:11 243:3 251:22 268:24 301:19 310:13 316:15 318:17 319:5 322:22 337:16,24 341:13 352:2,9 355:14 <b>client</b> [1] 268:17 <b>clinical</b> [14] 172:12,18 175:1,6,8 176:7,15 177:18 215:11 254:11 255:24 263:9,12 342:18 <b>clinically</b> [2] 176:17 178:1 <b>clinicians</b> [6] 175:10,14 175:15,23 177:21 262:20 <b>close</b> [4] 107:13 109:18 110:21 239:11 <b>closed</b> [2] 165:7 316:11 <b>closely</b> [2] 68:25 107:15 <b>closer</b> [2] 272:7 309:17 <b>closes</b> [1] 316:6 <b>closing</b> [1] 284:6 <b>co-counsel</b> [4] 1:6,7,8 24:19 <b>co-ordination</b> [1] 87:20 <b>co-signed</b> [1] 89:21 <b>coercive</b> [2] 217:1,8 <b>Coffey</b> [109] 1:6 2:5 25:12,13,15,16 26:2,18 27:12 28:7 29:19,25 30:13,20 31:2,7,21 32:17 32:22 33:7,14,22 34:2,7 34:12,18,23 35:17,22 36:1,11,19,25 37:7,15 37:21 38:5,12,21 39:13 39:22 40:2,7,12,19,23 41:2,8,13,17,23 42:7,11 42:17,24 43:5,11,18 44:1 44:5,15,21 45:4,9,13,18 45:24 46:4,12,18 47:5 47:11,16,20 48:4,9,15 48:24 49:10,20 50:4,11 50:18 51:3,12,24 52:7 53:1,10,15,24 54:19 55:11,18,24 56:10,20,24 57:10,14,19,25 58:9,16 58:21 59:8 217:3,7,12 <b>colleagues</b> [7] 77:10 101:18 114:7 338:21 350:16,24 352:10 <b>collected</b> [1] 208:15 <b>collectively</b> [6] 81:8,15 81:17,19 129:18 351:3 <b>columns</b> [1] 211:24 <b>comfort</b> [17] 180:24 184:7,20,22 185:3,10 186:5 204:19 226:25 227:2 245:4 275:20 276:15 289:11 294:24,25 344:8 <b>comfortable</b> [4] 169:25</p>
--	--	--	---	--

<p>233:18 234:15 350:13 <b>coming</b> [29] 19:3 53:4 59:22 83:11 104:24 112:12 114:4 121:16 128:8,12 132:21 133:3 133:22 134:12 151:11 245:7,13 274:24 280:24 283:1 295:7 296:20 305:20 306:15 308:17 326:25 344:10 354:6 360:14 <b>commencing</b> [1] 112:19 <b>comment</b> [16] 7:11 102:3 102:12 190:3 254:18 266:9 267:18 268:4,12 269:1 287:24 304:8 349:25 350:2 354:22 355:12 <b>commentary</b> [6] 142:4 162:18 183:3 187:9 194:23 353:14 <b>commenting</b> [2] 19:21 260:11 <b>comments</b> [7] 181:1 290:21 292:7 294:13 300:22 332:24 333:1 <b>Commission</b> [11] 1:1,6 1:7,8 24:19 25:3 60:2 71:22 298:5 362:4,7 <b>Commissioner</b> [44] 1:3 4:1,5 13:4 24:19 25:11 28:25 45:15 50:9 59:9 59:11,25 60:6,14 61:12 61:17 83:17 87:4 89:23 90:3,6,9 135:4,21 136:4 136:8 170:11,17 174:24 197:7,12,15,18 219:20 262:18,23 263:4 279:15 280:7,10,13 360:24 361:9 362:7 <b>committee</b> [17] 67:9 68:2,3,10 155:22 239:8 254:14 255:4,5,14,22 257:16,21 258:9 263:10 263:11 272:6 <b>communicate</b> [1] 313:13 <b>communicated</b> [12] 21:4 137:12 172:13,19 296:2,8,13 301:22 318:23 320:25 349:22 355:3 <b>communicating</b> [3] 111:9,10 315:4 <b>communication</b> [19] 111:15,20 153:13 154:1 156:19 168:15 212:23 250:18 306:14 307:16 308:10,16,23 309:13 313:1 318:22 320:22 327:8 335:13 <b>communications</b> [8] 96:11 101:13 149:20 155:8 169:4 239:4 306:25 326:23 <b>community</b> [28] 14:19 14:20 17:7 23:14 62:6,8 62:10 66:7 70:12 74:19 75:9 76:3 77:7,11,19 87:13,16 102:6 106:15</p>	<p>109:21 110:2 120:23 121:13 132:24 258:5 265:7 268:7 277:24 <b>company</b> [2] 251:19 265:17 <b>company's</b> [1] 265:12 <b>comparable</b> [1] 293:4 <b>compared</b> [3] 47:3 49:12 207:18 <b>comparing</b> [3] 51:25 52:3 53:5 <b>comparison</b> [1] 118:25 <b>compensation</b> [7] 122:21,25 135:18 281:3 281:23 282:1,17 <b>competency</b> [1] 208:5 <b>complete</b> [6] 21:3,11 36:14 271:9 286:4 299:5 <b>completed</b> [13] 62:22 208:5,19,24 212:15 213:20,21,21 214:17 215:7 227:12 235:17 296:7 <b>completely</b> [1] 38:18 <b>completion</b> [5] 212:4 214:10,23 215:16 223:13 <b>complex</b> [2] 180:5,11 <b>complexity</b> [1] 181:5 <b>compliance</b> [1] 215:11 <b>components</b> [3] 199:10 290:1 306:17 <b>composite</b> [1] 121:10 <b>composition</b> [1] 258:8 <b>compounding</b> [1] 269:23 <b>comprehensive</b> [1] 199:9 <b>computer</b> [1] 126:20 <b>concept</b> [3] 330:24 331:2 331:3 <b>concern</b> [6] 65:21 80:9 164:14 184:3 252:13 263:19 <b>concerned</b> [5] 14:23 18:1 288:5 348:10,15 <b>concerns</b> [6] 64:8,25 82:6 123:21 294:17 347:22 <b>conclude</b> [4] 32:4 272:17 340:24 341:11 <b>concluded</b> [4] 38:15 141:25 184:16 331:25 <b>conclusion</b> [11] 141:22 209:1,6 267:15 273:9 319:12 324:23 338:22 341:10 343:18 361:12 <b>conclusions</b> [7] 55:1 56:6 207:23 319:2 343:2 343:8,9 <b>conclusive</b> [1] 343:14 <b>concurred</b> [3] 186:17 186:20,21 <b>concurrence</b> [1] 187:3 <b>conducted</b> [4] 235:12 236:13,21 330:4</p>	<p><b>confer</b> [1] 111:21 <b>conference</b> [2] 5:24 21:13 <b>confidence</b> [8] 15:14 17:3 31:16 276:8,23 288:18 314:3 315:1 <b>confident</b> [11] 120:5 130:4 173:6 178:15 187:17 287:14,15,18 293:8 313:16,18 <b>confidently</b> [1] 352:2 <b>confirmed</b> [7] 47:21,22 47:22,24,25 48:1 163:21 <b>conflict</b> [4] 14:23 15:4 17:8 304:22 <b>conflicting</b> [1] 304:24 <b>confusion</b> [1] 19:2 <b>connotation</b> [1] 230:6 <b>cons</b> [1] 267:5 <b>consciously</b> [2] 31:3,11 <b>consensus</b> [3] 7:20 8:3 129:14 <b>consequences</b> [2] 191:12 193:1 <b>consider</b> [3] 53:20 253:14 261:11 <b>considerable</b> [1] 37:24 <b>consideration</b> [2] 126:20 212:6 <b>considered</b> [5] 16:24 37:1 118:12 234:12,13 <b>considering</b> [2] 44:23 53:4 <b>consistent</b> [1] 232:23 <b>constituency</b> [1] 147:17 <b>constituents</b> [1] 103:8 <b>constituted</b> [1] 78:17 <b>consult</b> [2] 111:20 149:15 <b>consultant</b> [1] 33:2 <b>consultants</b> [3] 35:1 179:13 227:10 <b>consultation</b> [1] 94:19 <b>consulted</b> [3] 93:20,25 188:4 <b>consume</b> [1] 87:7 <b>consumed</b> [4] 114:9,24 115:7 165:8 <b>consumes</b> [1] 87:11 <b>consuming</b> [2] 114:1 301:25 <b>contact</b> [11] 110:9 111:24 159:5 295:16 296:10 298:23 300:20 303:13,13 303:24 321:3 <b>contacted</b> [24] 103:7 260:4,5,12,19 261:5 264:9 276:24 277:3,8 296:22 297:15,16,18 298:20,21 299:23,25 302:8,19 303:17,21 304:16 321:2 <b>contacts</b> [1] 304:11 <b>contained</b> [8] 6:21</p>	<p>142:12 146:15 178:7 219:12 225:15 235:4 241:18 <b>contains</b> [1] 223:10 <b>contemplated</b> [1] 21:13 <b>content</b> [5] 145:21 146:11 310:10,12 318:16 <b>contents</b> [2] 2:1 176:6 <b>context</b> [23] 26:4 37:9 125:16 176:6 189:5,8 190:11,13,20 194:20 196:18 197:25 230:20 234:2,23 257:10,19 266:5 295:14 307:17 338:1 341:14,15 <b>continue</b> [8] 178:4 188:8 198:19 229:9 267:10 288:1 295:3 305:16 <b>continued</b> [9] 228:3,10 244:25 313:10 316:17 319:6,7 336:11 347:5 <b>continuing</b> [4] 55:3 56:14 209:5 276:14 <b>continuity</b> [1] 156:18 <b>continuous</b> [1] 80:20 <b>continuum</b> [1] 87:19 <b>contracts</b> [1] 89:20 <b>contrary</b> [3] 225:8,11 260:19 <b>contributing</b> [1] 102:9 <b>contribution</b> [2] 59:13 77:17 <b>control</b> [20] 208:11,14 213:25 293:10 295:8,21 305:22 306:3,6,11,16,19 306:24 307:13 308:6 309:23 310:22 312:1,25 326:9 <b>controls</b> [8] 208:2,8,16 216:1,6,11 231:22 312:7 <b>controversy</b> [1] 15:18 <b>convenient</b> [6] 60:13 90:2 197:9,11 279:16 360:25 <b>conversation</b> [30] 102:24 151:1 153:23 154:7,9,12 160:13 161:15 164:24 165:8 166:20 196:19 202:8 203:3 224:17 226:18 228:7 238:24,25 264:20 266:4 294:24 318:17 327:18 328:5,12,16 329:10 336:11 345:18 <b>conversations</b> [3] 316:12 328:16 342:6 <b>conversion</b> [1] 338:15 <b>conveyed</b> [1] 5:8 <b>conveying</b> [2] 244:9 287:22 <b>copies</b> [1] 74:13 <b>copy</b> [10] 18:12 72:23 169:21 210:9,12 219:14 221:3,3,6 336:13 <b>core</b> [1] 181:12 <b>corporation</b> [5] 62:15</p>	<p>63:12 106:20 206:3 265:11 <b>correct</b> [29] 8:10 11:9 12:1 16:3 17:18,25 18:4 19:24 20:1 21:6,8 22:8 22:10 23:11 33:13 35:11 35:25 37:6 40:1,11 45:17 51:6 55:10 58:15 138:14 151:3 195:7 280:5 362:3 <b>corrective</b> [3] 217:4,10 217:10 <b>correctly</b> [2] 33:5 140:8 <b>cost</b> [1] 252:22 <b>costs</b> [2] 124:8 282:25 <b>counsel</b> [6] 25:19 71:22 256:5 265:2,3 268:16 <b>country</b> [3] 230:16 231:25 234:9 <b>couple</b> [17] 4:12 19:10 67:10 71:18 106:2 113:23 118:6 123:19 136:18 140:22 269:8 285:4 300:19 322:16 330:14 335:8 350:4 <b>course</b> [27] 13:12 14:5 18:11 23:4 73:13 74:7 84:12,22 105:16 112:2 135:10 156:9,17 158:7 161:25 171:19 192:14 221:12 228:14 241:5 249:21 293:22 294:6 300:2 305:8 307:16 318:7 163:1 <b>courts</b> [1] 197:3 <b>cover</b> [12] 31:24 115:11 115:11 116:16,17 205:12 205:18 281:6,16 282:5 282:11 283:1 <b>coverage</b> [3] 146:7,14 161:10 <b>covered</b> [3] 272:24 273:1 281:2 <b>covering</b> [1] 35:3 <b>crafting</b> [1] 244:2 <b>Crawley</b> [3] 347:12 353:17 359:8 <b>create</b> [4] 181:25 217:1 263:21 289:7 <b>created</b> [7] 89:18 105:2 143:17 213:14 274:11 289:4 350:18 <b>creation</b> [1] 287:9 <b>credence</b> [1] 161:9 <b>critic</b> [7] 65:10,15,21 107:7 108:24 109:3,11 <b>critical</b> [7] 113:23 118:19 122:8 243:5 352:18 353:13 357:2 <b>criticism</b> [4] 26:6,11 28:22 29:15 <b>CROSS-EXAMINATION</b> [1] 13:6 <b>crossed</b> [2] 106:1,16 <b>crunching</b> [1] 20:4 <b>cryptic</b> [1] 259:10</p>
---	--	--	--	---





<p><b>discussion</b> [175] 11:22 12:3,17,19 19:9 20:23 54:11 77:13,18 82:2 83:24 98:14,16,20 100:23 102:5,7,9 113:13 123:9 125:7 126:2,24 128:13 129:2 137:15,19 148:25 149:1 150:24 152:14 155:20 156:3,4,7,11,23 157:1,19 158:4,11,21,23 159:16,21,23,24 160:3,4 160:19 162:3,11 164:9 165:4 166:10 169:7,14 180:2,21 181:20 182:2 182:21 188:16 189:5,8 190:5,6,10 191:1,2 196:5 196:12 203:24 219:2,6,8 219:10 223:17,20 224:1 224:6 226:23 228:4,11 233:13,15 239:7,12,25 240:24 241:2 243:4 244:17,25 246:6 247:12 248:16 249:22 250:11,24 251:16,25 252:17 253:2 253:19 255:3,17 256:16 256:18,21 257:4,11,20 258:24 259:14 267:10 270:12 271:2 272:11 273:17 278:9 290:3 291:2 291:4 294:19 300:7 302:25 316:15,17 317:3 317:19 318:18 319:1,6 320:2,5,7 321:5 322:25 323:10,14 324:11,19,20 324:21 327:5 328:10 329:12,17,18 335:7 336:15 337:17 338:20 339:6 340:10 344:2 345:11 346:8,17,20,25 347:7,15 349:24 350:15 350:17 352:6 353:1,23 354:5,7,13 355:12 360:5</p> <p><b>discussions</b> [42] 11:11 71:11 101:7,17,24 103:15 140:2,16,20 146:17,20 148:5,15 163:17 165:3 169:5 182:5 222:24 245:3 250:14,16,22 284:15 314:2 316:20 317:16 323:11,23 324:18 325:10 329:21,25 333:4 344:11 344:22 347:4,8 353:17 353:18 356:23 358:8 359:11</p> <p><b>disseminating</b> [2] 306:14 308:16</p> <p><b>distinct</b> [1] 166:16</p> <p><b>distinction</b> [6] 79:8 84:13 85:22 148:14 193:5 265:22</p> <p><b>distinctions</b> [1] 85:3</p> <p><b>Distinguishing</b> [1] 48:5</p> <p><b>distributed</b> [2] 241:1 243:8</p> <p><b>distribution</b> [1] 79:24</p> <p><b>district</b> [3] 62:2 147:11 147:12</p> <p><b>disturbing</b> [1] 354:21</p> <p><b>division</b> [3] 1:16 75:10 212:25</p>	<p><b>divisions</b> [4] 87:5,23 88:6,22</p> <p><b>DM</b> [1] 111:9</p> <p><b>doable</b> [1] 128:7</p> <p><b>doctor</b> [1] 305:24</p> <p><b>doctors</b> [2] 1:10 212:14</p> <p><b>document</b> [18] 33:24 131:14 162:15,16 163:1 205:25 206:17 210:13 211:20 214:13 215:8 220:15 221:7,13,21 222:6 226:16 288:2</p> <p><b>documentation</b> [4] 208:6 215:18 216:12 230:4</p> <p><b>documented</b> [2] 208:24 214:15</p> <p><b>documents</b> [1] 269:7</p> <p><b>doesn't</b> [5] 162:7 189:21 191:17 312:4 341:5</p> <p><b>dollar</b> [1] 282:6</p> <p><b>dollars</b> [2] 133:7,20</p> <p><b>domain</b> [8] 86:18 99:15 164:11 165:22 189:10 254:24 256:20,24</p> <p><b>Don</b> [1] 90:17</p> <p><b>done</b> [77] 6:3 11:6 16:11 21:5 29:13,15 31:13,19 33:17 36:15 37:4 40:16 41:5 42:13 54:3 81:2 88:19 89:7 141:16,19 159:6 180:5 184:12 193:24 200:2,10 203:8 208:18 214:21,23,25 226:8 230:14 234:12 237:3 239:18 240:20,25 244:5 249:8,15 251:1 252:21,25 254:2 261:25 267:8 283:9 286:4,7 289:13 290:7 292:22 296:5 297:8,20 298:9,11 298:12,12,25 299:14 301:19 303:7 312:13 313:19 314:7,9,18 315:7 317:13 318:6 320:19 328:25 331:5 338:22 359:23</p> <p><b>doubt</b> [5] 17:19 155:6 316:13 317:2 329:8</p> <p><b>down</b> [24] 29:3 47:17 48:16 49:4 56:2 57:22 61:9 121:25 126:8,25 132:21 133:3 134:12 143:9 156:11 160:20 170:16 172:9 207:23 212:10 213:5 235:8 285:12,24</p> <p><b>Dr</b> [24] 20:24 31:24 32:3 35:5 95:24 205:18 206:14 209:10,11,25 210:17,19 210:20 211:23 212:7,12 212:17,21 215:5,5 216:3 216:8,20 220:19</p> <p><b>draft</b> [3] 128:17 216:4,9</p> <p><b>drafted</b> [3] 170:20 189:25 243:20</p> <p><b>drafter</b> [1] 195:6</p> <p><b>drafting</b> [1] 244:8</p>	<p><b>draw</b> [2] 212:16 341:10</p> <p><b>drawn</b> [1] 343:2</p> <p><b>drilled</b> [2] 126:8,25</p> <p><b>drove</b> [1] 18:24</p> <p><b>Drs</b> [1] 214:9</p> <p><b>Drug</b> [2] 88:3,16</p> <p><b>during</b> [52] 6:14,22 45:25 58:22 61:13 63:15 63:19 64:7 65:11,20 66:14 67:14,15 68:15 70:5 72:13 74:3 91:25 106:15 124:1,20 125:23 126:1 130:1 142:1 156:9 161:15 165:2 201:12 207:21 237:9 239:25 240:23 244:18 252:17 259:7,23 264:22 297:20 298:11 299:4 301:20 316:24 320:16 329:19 331:18 333:18 343:17 345:16,22 350:1 356:25</p> <p><b>duties</b> [9] 74:22 75:3 77:6 79:15 84:14,15,19 305:9,11</p> <p><b>duty</b> [1] 305:10</p> <p><b>Dyer</b> [3] 210:21 214:8 215:5</p> <p><b>dynamic</b> [1] 324:20</p> <hr/> <p style="text-align: center;"><b>-E-</b></p> <hr/> <p><b>e</b> [2] 208:21,21</p> <p><b>early</b> [8] 33:8 35:2 60:10 65:13 69:9 120:25 323:2 329:23</p> <p><b>easier</b> [1] 210:12</p> <p><b>easiest</b> [1] 87:9</p> <p><b>Easter</b> [2] 116:1,13</p> <p><b>Eastern</b> [131] 1:11 4:18 5:15 9:2,19 10:15 14:21 15:1,5,12 16:11 22:7 25:22 26:12,15 27:3,6 27:16 28:1,10,13 29:8 30:4,9 31:13 35:2 44:13 46:5 47:2 50:25 51:1,10 51:15,16 56:1 71:6 83:19 106:24 145:5,6 150:1 161:11 168:11 171:20,21 172:11 173:4,7,14 178:16 179:20 182:6,15 188:17 191:2 198:21 201:21 206:7 210:14 212:1 213:3 215:4,13,20,23 216:3,8 216:14,20 219:13 220:12 224:1 228:12 229:12,25 234:12 241:1,19 242:4 243:8 245:8,19 247:13 251:5,23 253:11,21 254:6 256:19 257:2 261:8 262:9 263:6 265:2,5,18 275:1 285:19 286:21,22 290:5 292:12 295:16 296:9,18 297:11 299:4 302:10 303:6,12,16,24 304:10 304:19,25 305:21 310:1 310:8 313:13,22 314:4,5 315:20 321:11,14,18 325:12 336:5 355:7,10 357:7</p>	<p><b>easy</b> [1] 342:10</p> <p><b>Ed</b> [1] 95:24</p> <p><b>edit</b> [1] 152:7</p> <p><b>educational</b> [1] 61:23</p> <p><b>effect</b> [6] 83:7,11,18,21 242:3 308:25</p> <p><b>effective</b> [3] 76:7 209:24 210:4</p> <p><b>either</b> [17] 29:8 82:11 92:23 105:10 106:1 116:19 140:21 142:3 163:23 191:17 224:10 230:16 242:24 254:22 296:10 343:13 355:17</p> <p><b>either/or</b> [2] 112:8,14</p> <p><b>elaborate</b> [1] 201:10</p> <p><b>elaboration</b> [1] 199:13</p> <p><b>elected</b> [3] 61:25 62:9 147:10</p> <p><b>election</b> [4] 62:11 66:10 97:19,22</p> <p><b>Elms</b> [1] 210:20</p> <p><b>emanated</b> [1] 24:6</p> <p><b>emphasis</b> [2] 80:9 307:5</p> <p><b>employees</b> [2] 89:1,3</p> <p><b>employer</b> [1] 62:16</p> <p><b>enacted</b> [1] 83:5</p> <p><b>end</b> [13] 11:21 32:10 42:19,25 50:6 75:17 91:13 92:24,25 122:2 129:15 207:12 336:13</p> <p><b>ended</b> [2] 133:17 336:2</p> <p><b>engaged</b> [4] 152:19 158:4 182:4 322:24</p> <p><b>engagements</b> [1] 67:5</p> <p><b>enhancing</b> [1] 124:11</p> <p><b>ensure</b> [18] 16:16 75:13 75:14,15 78:2,3 173:8 178:17 208:15,20 286:16 287:5 288:16 295:10,22 306:20 315:1 350:16</p> <p><b>ensures</b> [1] 286:15</p> <p><b>ensuring</b> [3] 36:20 199:1 247:18</p> <p><b>entered</b> [5] 61:16,18,19 65:6 280:25</p> <p><b>entering</b> [1] 62:12</p> <p><b>entirely</b> [1] 20:12</p> <p><b>entities</b> [2] 76:2 78:16</p> <p><b>enumerated</b> [1] 211:21</p> <p><b>envisaged</b> [1] 282:7</p> <p><b>equation</b> [1] 243:6</p> <p><b>equipment</b> [3] 124:10 125:17 288:14</p> <p><b>ER</b> [2] 98:6 212:7</p> <p><b>ER/PR</b> [62] 13:20 14:7 16:9 18:1 37:23 51:4 70:7,21 71:7,25 74:12 82:10 86:23 93:5 94:10 94:24 98:25 99:7 116:24 117:18 118:20 119:22 122:12 124:20 126:6 136:12,20 138:8,20 139:11 140:3 171:19,22</p>	<p>172:8 173:5,15 179:7,19 179:21 184:2 198:23 201:24 202:5,18,24 203:6 204:8 209:8,24 210:3 212:11 215:9 228:5 229:20 235:11,18 239:13 283:21 293:10 314:11 317:4 318:13</p> <p><b>error</b> [20] 18:22 19:3,5 20:17 58:4,6,11,18,22 59:7 188:12 189:18,22 191:11 192:24 288:9 305:25 306:1 310:19,21</p> <p><b>errors</b> [6] 26:9 180:8 190:17 198:10,12,14</p> <p><b>especially</b> [2] 194:8 341:8</p> <p><b>espouse</b> [2] 191:17 194:17</p> <p><b>espoused</b> [3] 192:2,7 199:12</p> <p><b>essential</b> [1] 208:9</p> <p><b>establish</b> [4] 117:4 215:21 216:23 344:15</p> <p><b>established</b> [8] 76:4 80:2 84:1 201:23 229:20 229:24 231:17 282:16</p> <p><b>establishing</b> [2] 298:4,5</p> <p><b>establishment</b> [2] 323:4 324:13</p> <p><b>et</b> [1] 1:10</p> <p><b>ethical</b> [1] 256:12</p> <p><b>ethically</b> [2] 30:4 31:19</p> <p><b>ethics</b> [15] 15:22 254:14 255:4,5,13,22 257:16,21 258:4,9,18 262:15 263:9 263:11,14</p> <p><b>evaluating</b> [1] 208:6</p> <p><b>evaluation</b> [6] 214:14 215:25 216:5 291:19 292:22 322:21</p> <p><b>evening</b> [3] 102:16 104:14 317:17</p> <p><b>event</b> [3] 25:5 162:1 309:1</p> <p><b>events</b> [9] 16:6 23:4 158:1 219:3 239:2 298:6 309:19 310:3,9</p> <p><b>eventually</b> [5] 26:10 74:11 75:17 130:25 344:14</p> <p><b>everybody</b> [2] 60:1 321:3</p> <p><b>evidence</b> [5] 15:24 24:21 24:22 61:14 296:19</p> <p><b>evident</b> [1] 59:5</p> <p><b>evolved</b> [1] 195:14</p> <p><b>exact</b> [13] 39:10 66:11 87:23 92:9,18 116:12 160:13 162:17 163:22 182:22 208:17 304:6 311:23</p> <p><b>exactly</b> [30] 86:10 97:5 98:3 118:9,16 150:9 153:2,24 171:17 172:22 181:15 183:23 185:7</p>
--	--	--	---	---

<p>187:12 222:2 223:7 228:1 239:17 242:13,18 253:17 264:13 283:17 298:2 312:16,20 317:5 322:20 335:22,24 <b>examination</b> [7] 2:3,4 2:7 4:3 61:1 229:25 238:9 <b>examine</b> [2] 54:25 56:6 <b>example</b> [15] 20:15 68:6 69:2,8 77:16 80:8 103:8 115:9 120:24 122:9,15 125:9 135:18 212:18 278:1 <b>Excellence</b> [18] 16:24 229:23 230:3,8,11,17,23 231:6 232:4,8 233:14 264:11 286:11,18 287:9 287:19 289:4,9 <b>excellent</b> [5] 231:2,4,21 234:13 313:20 <b>exception</b> [1] 44:9 <b>excerpt</b> [1] 285:3 <b>excess</b> [1] 281:25 <b>exchange</b> [4] 102:18 163:22 164:1 346:16 <b>exchanges</b> [1] 41:24 <b>exclude</b> [1] 177:9 <b>Executive</b> [1] 63:9 <b>exercise</b> [5] 71:11 85:5 121:14,25 128:19 <b>exhibit</b> [19] 4:14 8:23 18:8 31:22,23,25 33:23 34:13 37:17 43:14 54:20 58:1 61:5 206:11,16 209:13,23 295:4,4 <b>exhibits</b> [9] 3:1,2 61:7 61:11,12,15,18,19 292:24 <b>exist</b> [1] 86:1 <b>existing</b> [1] 133:24 <b>expanded</b> [1] 125:6 <b>expanding</b> [1] 124:12 <b>expansion</b> [1] 125:5 <b>expect</b> [5] 128:11 184:13 232:24 277:20,25 <b>expectation</b> [2] 251:21 251:25 <b>expected</b> [9] 35:2 212:3 214:10,17,23 215:7,16 223:12 229:3 <b>expertise</b> [3] 234:10 289:5 301:10 <b>experts</b> [2] 185:14,15 <b>explain</b> [4] 49:23 181:4 181:5,6 <b>explained</b> [7] 27:2,4 29:9,12 31:10 52:22,25 <b>explaining</b> [1] 48:12 <b>explanation</b> [6] 9:23,24 264:17 333:24 334:1 360:2 <b>exploration</b> [1] 327:6 <b>exploring</b> [1] 240:1 <b>express</b> [2] 250:7 284:19 <b>expressed</b> [6] 192:6</p>	<p>249:24 250:2 251:15 284:23 357:22 <b>expressing</b> [1] 267:7 <b>extend</b> [1] 288:7 <b>extension</b> [1] 332:9 <b>extensive</b> [1] 330:19 <b>extent</b> [3] 22:4 152:19 263:17 <b>external</b> [35] 33:2 179:13 184:16,18 185:14,17 186:15 187:1 200:3,10 201:17,22 202:3 204:5 205:20 208:2,7 213:2 216:11 229:1,14 285:18 286:20,21 291:16 327:15 327:18 328:20,24 329:10 329:18 331:14 337:15 338:8 343:23 <b>extracted</b> [1] 237:11 <b>extremely</b> [1] 287:21 <b>eye</b> [2] 225:20 226:3</p> <hr/> <p style="text-align: center;"><b>-F-</b></p> <p><b>f</b> [1] 208:21 <b>face</b> [1] 15:13 <b>face-to-face</b> [5] 22:6,12 22:20 346:14,16 <b>facilitated</b> [1] 208:3 <b>facility</b> [3] 64:11,24 72:1 <b>fact</b> [82] 6:25 7:4 12:15 13:23 15:13,14 25:20,21 26:5,24 27:8,23 28:21 31:3,15 33:20 35:18 39:19 41:20 56:11 70:20 83:25 84:21 112:25 115:17 137:8 151:16 162:12,19 174:11 180:17 181:10 184:15,20,22 188:12 189:18 190:17 197:2 198:9 202:13 207:11 209:16,23 217:22 225:21,24 226:3 229:12 232:9 235:20 246:19 252:4 260:5 263:23 278:3 288:9 289:1 297:15,24 299:8,13 302:18 303:13 303:14 305:19 310:2 311:11,25 313:21 326:2 334:8 340:4 347:24 349:7 350:13 354:2,6,18 355:21 356:7 359:20 <b>factor</b> [3] 15:18 26:13 94:11 <b>factored</b> [1] 26:15 <b>factors</b> [5] 179:18,21,23 181:9 335:4 <b>facts</b> [1] 349:8 <b>failed</b> [2] 266:20 267:1 <b>fair</b> [12] 12:9 113:12 219:9 242:6 250:21 264:11 287:21 305:4,6 323:14 324:10 344:3 <b>fairly</b> [3] 87:16 219:8 238:23 <b>faith</b> [1] 299:15 <b>fall</b> [24] 33:10 62:9 65:13</p>	<p>65:13 73:9 90:21,23 97:18,19,21 98:1 99:11 99:20 113:9 114:4 120:23 120:25 121:25 127:7,11 127:12 136:7 139:3 329:23 <b>false</b> [2] 215:22 285:23 <b>familiar</b> [4] 14:16 112:11 230:9 284:22 <b>familiarity</b> [1] 104:25 <b>families</b> [9] 5:17 25:1 44:10,11,14 247:8 255:8 255:15 295:18 <b>family</b> [12] 9:12 44:11 44:12 88:1,2 114:13,16 114:21 119:2,8 296:12 306:9 <b>far</b> [1] 159:25 <b>fashion</b> [6] 84:18 102:10 147:20 244:4 263:20 277:19 <b>fast</b> [1] 257:3 <b>faulty</b> [1] 141:23 <b>fax</b> [4] 220:6,12 336:13 336:16 <b>faxed</b> [3] 218:13 221:7 222:11 <b>February</b> [20] 38:1,6,22 39:2 40:15,16 71:6,15 163:12 166:3 173:6,15 173:22,25 187:16 212:15 215:9 297:6 309:18,24 <b>feedback</b> [2] 80:7,12 <b>felt</b> [7] 17:14 84:15 138:10 181:10 233:18 274:6 356:7 <b>few</b> [7] 108:22 250:20,23 253:5 260:7 297:4 298:22 <b>field</b> [2] 185:15,15 <b>fifteen</b> [4] 88:24 90:4 280:8 298:10 <b>fifth</b> [1] 198:4 <b>figure</b> [7] 43:15 51:25 102:14 191:10 271:15 325:1 332:1 <b>figures</b> [1] 43:14 <b>file</b> [7] 67:17 68:5 118:2 119:2 137:17 142:8 182:4 <b>filed</b> [1] 144:10 <b>files</b> [3] 67:11 98:20 237:10 <b>filled</b> [1] 91:23 <b>filling</b> [1] 92:10 <b>final</b> [1] 8:3 <b>finalized</b> [1] 192:22 <b>finally</b> [1] 216:22 <b>Finance</b> [1] 132:22 <b>financial</b> [6] 62:18 63:1 80:4 88:6 121:2 123:10 <b>finding</b> [3] 24:23 27:25 326:22 <b>findings</b> [7] 25:3 285:18 327:14 329:5 332:18,19 332:22 <b>fine</b> [2] 5:2 323:19</p>	<p><b>finish</b> [1] 135:1 <b>finished</b> [1] 239:11 <b>first</b> [82] 13:13 14:18 24:20 26:14 34:10 42:5 75:3 91:5 98:24 99:6,16 104:4 122:5 123:19 124:1 125:2,24 126:13 128:16 128:17 130:1 131:5 132:13 136:17 137:3,18 142:22,24 143:9,11 150:13 153:4 154:25 156:13 157:11 165:4,11 166:7,23 173:13 180:2 182:1 185:12 198:21 204:24 206:11,12 209:12 212:4 217:18 219:5,21 232:7 235:8,20 248:19 256:20,23 261:23 268:1 269:4,11 277:14 278:5 279:8,20,25 280:17 288:21 300:5 305:11 307:3 310:16 321:16 325:7 339:23 344:20,25 346:20 349:19 352:25 358:10 <b>firstly</b> [1] 74:25 <b>fiscal</b> [7] 121:3,16,22 128:1 134:4,5 135:17 <b>fit</b> [1] 210:7 <b>five</b> [3] 279:18 289:17 295:4 <b>fix</b> [1] 334:3 <b>fixation</b> [1] 214:6 <b>fixed</b> [9] 185:3 320:20 332:2,5,13 334:5 336:9 339:4 340:4 <b>flavour</b> [2] 255:18 323:21 <b>flexibility</b> [3] 133:10,24 135:6 <b>flow</b> [1] 111:7 <b>flowing</b> [2] 219:13,15 <b>focus</b> [13] 9:8 28:9 30:9 84:24 113:20 141:2 233:14 236:10 239:15 247:17,22 342:22 354:3 <b>focused</b> [5] 11:18 264:2 339:7,8 340:10 <b>focussing</b> [2] 84:23 233:13 <b>follow</b> [4] 163:1 210:13 298:25 344:23 <b>follow-up</b> [1] 209:10 <b>followed</b> [6] 66:12,15 160:19 250:15 260:8 315:19 <b>following</b> [15] 12:18 120:20 146:5,21 165:1,9 180:23 233:18 254:19 316:14,21 319:5 323:3 345:3 347:16 <b>follows</b> [3] 37:23 201:9 236:3 <b>force</b> [3] 298:5 300:24 301:14 <b>foregoing</b> [1] 362:2 <b>foreign</b> [3] 330:25 331:2</p>	<p>331:8 <b>foremost</b> [1] 305:11 <b>forget</b> [1] 108:18 <b>Forgetting</b> [1] 268:21 <b>fork</b> [1] 29:2 <b>form</b> [4] 55:2 56:12 193:24 194:3 <b>formal</b> [1] 346:4 <b>formalized</b> [2] 80:14 194:11 <b>formally</b> [1] 83:24 <b>formed</b> [2] 275:7 355:16 <b>former</b> [11] 10:19 11:6 62:14,15 66:12,15 101:18 117:25 150:1 213:8 352:10 <b>forming</b> [1] 69:10 <b>forms</b> [1] 121:10 <b>formulated</b> [1] 181:20 <b>forth</b> [2] 7:24 8:6 <b>forthcoming</b> [1] 152:25 <b>forthright</b> [1] 269:10 <b>forum</b> [4] 193:23 277:21 315:8 354:8 <b>forward</b> [17] 60:4 77:10 78:2,8 127:17 131:4 132:12 151:11 181:25 186:12 187:18 282:17 296:20 339:10 351:4 353:22 360:14 <b>forwarded</b> [1] 257:3 <b>forwarding</b> [1] 205:25 <b>found</b> [6] 26:10 27:24 51:7 71:7 273:16 302:25 <b>four</b> [30] 18:19 19:5,11 19:19,23 20:11 75:24 78:15 79:17 81:6,10,12 82:9 83:25 88:10,13,20 89:16 92:14 111:4 116:5 127:4 129:17 130:21 206:11 228:17 284:3 323:12 344:12 360:8 <b>fourteen</b> [1] 88:24 <b>fourth</b> [1] 198:4 <b>frame</b> [3] 76:19,25 329:21 <b>framed</b> [4] 130:9 313:8 337:14 342:7 <b>framework</b> [2] 134:5 135:17 <b>framing</b> [1] 332:22 <b>frank</b> [3] 11:19 79:7 352:6 <b>French</b> [2] 97:13 98:5 <b>frequent</b> [4] 80:20 110:8 316:24 324:21 <b>frequently</b> [5] 69:10,15 93:9 194:13,14 <b>front</b> [3] 14:8 18:11 61:8 <b>fronts</b> [2] 327:7 338:14 <b>full</b> [11] 29:3 87:19 95:1 206:12 228:2 269:19 270:15 271:9 274:15 323:1 356:3</p>
--	--	--	--	---

<p><b>full-time</b> [2] 147:6,14  <b>fuller</b> [6] 156:7 190:9  196:20 274:22 350:17  353:23  <b>fully</b> [3] 276:4 301:1  356:10  <b>function</b> [4] 64:5 67:25  108:23 342:23  <b>functioned</b> [1] 89:16  <b>functioning</b> [1] 293:4  <b>functions</b> [2] 121:7  193:21  <b>fund</b> [1] 133:7  <b>fundamental</b> [2] 78:6  85:2  <b>fundamentally</b> [8] 64:1  71:5 76:18 85:7 276:18  338:9 354:23 355:5  <b>funded</b> [2] 132:19 133:2  <b>funding</b> [14] 77:1,16  87:12 121:18 123:24  125:21 126:12 127:14  130:19 131:22 133:14  281:6,18,19  <b>funds</b> [1] 135:9  <b>future</b> [8] 78:5,9 223:19  249:22 251:17 286:3,17  307:1</p>	<p><b>giving</b> [7] 61:22 160:14  185:16 263:17 269:10  304:25 353:14  <b>glean</b> [2] 284:17 340:15  <b>gleaned</b> [7] 150:25 151:1  203:23 224:2 258:20  291:6 343:12  <b>Glenda</b> [3] 96:13,15 97:3  <b>global</b> [1] 132:1  <b>go-forward</b> [2] 98:21  287:10  <b>goes</b> [12] 37:24 47:21  128:15 201:10 202:1  208:25 209:18 211:21  229:18 236:1 268:4 293:5  <b>gone</b> [13] 10:14 58:17  60:3 114:15 129:4 181:22  200:3 238:8 239:10 246:9  316:10 322:3 334:12  <b>good</b> [20] 4:2,5,8,10 13:8  13:10 17:14,15 60:21,23  197:18 234:15 245:6  275:23 280:5 283:17  293:6 299:15 313:12  317:6  <b>governing</b> [1] 76:8  <b>government</b> [43] 67:11  69:10 75:2 77:5 78:1,9  80:10,23,24 83:20 86:24  87:12 106:13 113:4  114:12 120:20 128:9  188:11 189:16,20 190:16  191:9 192:4,10,21,23  193:10 198:7,8 265:8  279:8,9 280:1 311:22  325:12 345:1 350:19,21  350:23 351:15,16 352:9  352:14  <b>Government's</b> [1]  110:4  <b>grasp</b> [1] 275:23  <b>gravely</b> [1] 288:8  <b>great</b> [4] 15:13,18 104:8  290:1  <b>greater</b> [2] 15:8 284:16  <b>greatest</b> [1] 121:19  <b>grew</b> [2] 228:10 232:12  <b>Griffiths</b> [3] 170:21,21  190:1  <b>grossing</b> [1] 214:6  <b>group</b> [20] 4:12 48:25  53:3 68:7 77:25 105:8  106:2 157:2,4 159:12  161:16 167:16 168:6,8  176:16 185:18 195:24  230:2 303:10 332:10  <b>groups</b> [1] 323:11  <b>grown</b> [1] 233:11  <b>guess</b> [24] 6:10 24:18  32:23 51:1 52:5 77:24  81:19 112:23 123:22  160:12 172:1 186:8 194:8  222:12 243:23 268:13  285:13 292:10 293:10,19  300:2 338:4 340:15  349:23  <b>guessing</b> [1] 95:7</p>	<p><b>guidance</b> [1] 142:4  <b>guide</b> [1] 158:11  <b>guided</b> [2] 188:20 195:2  <b>Gulliver</b> [2] 210:20,21</p> <hr/> <p style="text-align: center;"><b>-H-</b></p> <hr/> <p><b>h</b> [1] 208:21  <b>half</b> [4] 60:16 258:24  259:17 272:9  <b>hallway</b> [2] 100:8,9  <b>halt</b> [1] 286:6  <b>hand</b> [3] 205:15 234:23  239:20  <b>handled</b> [6] 16:19 50:8  50:10,12 274:1,19  <b>handling</b> [3] 94:10 215:2  249:23  <b>handwriting</b> [1] 57:1  <b>Hansard</b> [3] 285:3  311:20 322:13  <b>happening</b> [10] 18:23  155:17 228:19 232:10  276:17 293:22,23 294:7  343:15,16  <b>hard</b> [5] 169:21 210:9,11  221:3,6  <b>haunting</b> [2] 335:8  349:23  <b>head</b> [9] 20:5,10 115:19  115:20 116:15 117:11  152:12 213:1 264:3  <b>headed</b> [2] 259:18 283:20  <b>heading</b> [3] 129:20,21  201:9  <b>heads</b> [1] 239:4  <b>health</b> [209] 1:12,18 4:19  5:15 9:2,20 10:15 14:18  14:20,21 15:1,5,12 16:11  17:7 22:8 23:13 25:22  26:12,16 27:4,6,16 28:1  28:10,13 29:9 30:4,10  31:13 35:2 44:14 46:5  47:2 50:25 51:1,11,15  51:16 56:1 62:5,8,10,15  62:24 63:1,12 65:11,16  66:7,15 70:12 71:6 74:19  74:25 75:9,14,19,23,24  76:1,3,8,20 77:7,11,19  78:6,15,19 80:16,25 83:5  83:19 84:11,23 87:13,18  88:10 89:4,4,19 101:18  102:6 105:25 106:15,20  106:24 107:6 108:18  109:21,23 110:1 120:23  120:24 121:13 124:4  126:18 127:24 128:11  129:17 132:23 145:5,7  150:1 154:4 161:11  168:11 171:20,21 173:4  173:7,14 178:16 179:20  182:7,15 188:17 191:2  193:1 198:22 201:21  206:3,7 210:15 212:1  213:4 215:4,13,20,24  216:3,8,14,20 219:13  220:12 224:1 228:12  229:13,25 230:6 234:12</p>	<p>241:1,19 242:4 243:8  245:8,19 247:13 251:5  251:23 253:11,21 254:6  256:19 257:2 261:8 262:9  263:6 265:5,7,18 268:7  273:18 275:1 277:24  285:19 286:21,23 288:19  290:5 292:13,14 295:16  296:10,18 297:8,11  301:10 302:11 303:6,12  303:16,24 304:10,20,25  305:21 310:1 313:13,22  314:4,5 315:20 321:11  321:14,18 325:12 330:20  331:5 336:5 348:1 350:21  352:13,16 354:24 355:7  355:10  <b>Health's</b> [4] 172:11  265:3 310:8 357:7  <b>healthy</b> [1] 68:6  <b>hear</b> [5] 67:19 146:6  153:5 194:24 300:8  <b>heard</b> [15] 100:21 104:11  149:6,7 171:5 204:20  248:19 279:25 294:19  296:15 299:21 300:9  305:19 355:9 362:5  <b>hearing</b> [8] 137:21 153:4  165:4 185:8 273:22 302:6  304:17 305:1  <b>held</b> [4] 65:16 91:2,4  106:11  <b>Hello</b> [1] 4:5  <b>help</b> [3] 16:16 24:23  147:8  <b>helped</b> [1] 9:9  <b>helpful</b> [3] 32:6 33:20  210:11  <b>Hennebury</b> [1] 1:10  <b>Hennessey</b> [24] 17:14  23:4,13 95:16 108:7  149:22 151:5 157:5 169:3  190:2 196:4,6,8 225:1  243:17 245:23 250:17  317:22 318:10 319:25  321:10 327:13 328:14  329:4  <b>Hennessey's</b> [1] 170:24  <b>hereby</b> [1] 362:2  <b>hesitation</b> [1] 196:25  <b>high</b> [6] 198:23 199:14  246:10 276:8 287:21  293:9  <b>highest</b> [2] 173:8 178:17  <b>highlight</b> [1] 14:12  <b>himself</b> [2] 347:9 356:14  <b>hindsight</b> [1] 24:8  <b>hire</b> [1] 89:5  <b>hired</b> [1] 89:20  <b>historically</b> [1] 85:10  <b>home</b> [1] 316:10  <b>honest</b> [4] 79:7 82:15  83:14 112:22  <b>Honourable</b> [2] 1:3  362:6  <b>hope</b> [1] 24:22</p>	<p><b>hormone</b> [3] 1:2 288:14  362:4  <b>hospital</b> [6] 62:14 63:6  214:23 215:1 308:10  312:13  <b>Hospitals</b> [1] 84:12  <b>hour</b> [14] 60:16 150:6  258:24,24 259:17,17  271:24,25 272:2,3,9,9  273:5,6  <b>house</b> [64] 14:1 62:1  115:21 116:2,14,21 138:1  138:3 150:4 165:5,6  193:18,23 196:24 231:15  234:5 239:14 244:11  246:8 254:23 258:1,11  259:18 270:14,25 271:8  271:11 272:3,20 273:12  275:21 276:3,10 277:12  277:20 278:8,17 279:4  279:23 283:20,22 284:8  284:12,20 290:23 291:5  291:11 292:3 294:25  297:25 299:6,15,19  302:21 304:15 316:5,11  316:21,25 317:1,3,9  322:13 346:6  <b>human</b> [4] 63:13 179:9  201:11 291:12  <b>hundreds</b> [1] 133:19  <b>Hunt</b> [1] 95:24  <b>Hynes</b> [1] 20:24</p>
<hr/> <p style="text-align: center;"><b>-G-</b></p> <hr/> <p><b>gain</b> [2] 315:9 351:1  <b>gained</b> [4] 317:25 340:18  345:22 347:4  <b>gaining</b> [4] 102:7 162:10  243:24 321:20  <b>garnered</b> [1] 137:9  <b>gather</b> [5] 17:24 21:4  37:3 151:4 167:15  <b>gathered</b> [5] 137:22  149:14 150:8 254:18  278:14  <b>gathering</b> [2] 322:6  331:19  <b>general</b> [8] 21:21 99:24  105:6 112:15 139:5  159:21 199:11 315:5  <b>generally</b> [7] 20:13  23:19 33:3 81:23 111:23  256:16 316:10  <b>generic</b> [2] 125:13  176:19  <b>gentleman</b> [1] 90:17  <b>George</b> [5] 149:25 157:9  157:13,14,18  <b>George's</b> [1] 157:17  <b>gist</b> [1] 137:13  <b>given</b> [30] 6:18 9:14,17  9:22 14:10,25 16:11  28:15 57:23 69:5 83:25  85:25 86:14 111:8 141:2  143:1 238:6 239:4 243:24  246:6 254:3 260:10  263:23 268:25 272:16,19  287:16 288:23 304:20  328:3</p>		<hr/> <p style="text-align: center;"><b>-I-</b></p> <hr/> <p><b>idea</b> [5] 26:20 58:17  143:14 191:8 222:8  <b>ideal</b> [1] 313:22  <b>identified</b> [20] 122:7  127:13,24 130:1 133:1  133:12 168:6 171:20  185:2 186:3 207:18,21  209:5 297:24 332:12  339:23 340:3,7,13 343:23  <b>identify</b> [7] 121:3,8  300:11,18 301:18 336:8  339:3  <b>identifying</b> [2] 121:1  303:4  <b>IHC</b> [8] 70:20 212:25  213:14,22,24 215:10  293:6,9  <b>illustrate</b> [1] 133:16  <b>illustration</b> [1] 132:20  <b>immediate</b> [5] 61:5  139:16 141:7,11 155:14  <b>immediately</b> [6] 27:9  29:11 31:14 184:1 209:25  210:4  <b>immunohistochemistry</b>  [5] 206:2 207:25 208:22  210:16 220:17  <b>impact</b> [3] 273:19 347:25  350:12  <b>impacted</b> [20] 172:14,20  251:2 260:17 263:20,23  274:23 275:3,25 297:10  297:19 301:8,19 303:5</p>		

<p>322:2,9 326:21 347:23 348:3,8</p> <p><b>impacts</b> [1] 354:25</p> <p><b>implement</b> [1] 78:3</p> <p><b>implementation</b> [4] 32:7 35:7 203:8 209:20</p> <p><b>implemented</b> [38] 32:21 33:1,11 34:16 35:1,11 35:16 36:10 173:7 178:16 179:12 184:10,19 186:16 201:16,21 202:6,12 203:5 205:1 209:22 211:3 217:22 218:6 222:23 224:14 225:7,13,17,21 229:13 233:9,16 291:21 332:8,11 333:19 334:11</p> <p><b>implication</b> [1] 333:5</p> <p><b>implications</b> [1] 123:10</p> <p><b>implies</b> [1] 180:18</p> <p><b>implying</b> [1] 180:16</p> <p><b>importance</b> [3] 118:22 119:17 349:5</p> <p><b>important</b> [4] 59:18 119:17 193:6 353:13</p> <p><b>impression</b> [7] 102:11 166:6,16 204:4,6 238:7 311:11</p> <p><b>improvement</b> [2] 216:23 332:11</p> <p><b>improvements</b> [4] 114:22 293:25 294:20 326:5</p> <p><b>in-person</b> [2] 22:13 170:10</p> <p><b>inaccurate</b> [4] 255:21 296:5 299:5,16</p> <p><b>inappropriate</b> [2] 95:8 273:25</p> <p><b>inappropriately</b> [2] 269:24 274:1</p> <p><b>incidents</b> [1] 300:20</p> <p><b>include</b> [3] 86:6 177:5 198:24</p> <p><b>included</b> [12] 131:17 158:15,16,22 168:15 199:8,15 247:4 251:16 280:16 291:10 321:17</p> <p><b>includes</b> [1] 306:6</p> <p><b>including</b> [10] 6:25 40:22 162:25 182:25 183:2 207:14 213:15 258:4 259:1 279:22</p> <p><b>inclusive</b> [1] 61:15</p> <p><b>incomplete</b> [3] 137:12 226:4 243:9</p> <p><b>incorrect</b> [1] 171:23</p> <p><b>increase</b> [5] 128:10 130:25 133:7,16,20</p> <p><b>increased</b> [3] 124:6 281:6 282:25</p> <p><b>indeed</b> [5] 23:14 24:4 188:2 250:7 361:2</p> <p><b>independent</b> [1] 285:15</p> <p><b>indicate</b> [9] 6:16 43:3 154:1 160:23 229:2</p>	<p>248:14 249:17 289:19 313:19</p> <p><b>indicated</b> [40] 15:25 22:19 53:16 83:4,16 84:15 86:17 90:12 104:17 136:25 138:9 154:14 163:16 178:13,14 198:5 200:17 202:4,10,23 203:2 210:15 212:8,12,15,20 213:20 214:8,20 215:14 220:20 226:16 228:25 238:18 251:10 254:21 275:23 280:22 294:1 322:17</p> <p><b>indicates</b> [8] 86:12 172:10 179:18 188:9 198:21 209:17 215:15 229:19</p> <p><b>indicating</b> [2] 211:2 234:11</p> <p><b>indication</b> [4] 164:5 202:14 203:6 258:17</p> <p><b>indicators</b> [1] 216:24</p> <p><b>indirectly</b> [1] 82:11</p> <p><b>individual</b> [4] 53:6 82:1 223:20 234:14</p> <p><b>individually</b> [4] 81:14 81:20 172:13,19</p> <p><b>individuals</b> [25] 9:10 15:12 21:24 33:15 39:23 104:19 105:1,15 112:12 247:4 260:12,17 261:22 263:7,13,22 291:18 300:10 302:6,24 303:3 303:23 308:8 323:12 348:3</p> <p><b>industry</b> [4] 62:18,19,20 63:2</p> <p><b>inferred</b> [1] 257:21</p> <p><b>inflationary</b> [1] 124:8</p> <p><b>influenced</b> [2] 112:23 152:20</p> <p><b>inform</b> [1] 194:7</p> <p><b>information</b> [183] 5:6,8 5:20,20,22 6:2,7,19 7:5 7:8,14 8:12,16,24 9:1,14 9:17,24 10:4,7,12,15,21 11:1,12 12:5 14:22,25 19:2 21:20 22:21,22 23:9 38:9,18,19 55:2 56:12 78:7 105:6 108:25 109:1 109:4 111:7 112:3,5 124:14 125:1,11,20,22 126:7,12,21 127:14 129:22,25 130:14 137:8 137:11 143:19 144:25 145:5 150:11 151:10 152:7,24 161:10 162:12 162:21 164:11 165:21,23 166:10,22 170:8,9 178:7 182:6,14 188:18,19 189:4 189:6 194:4,6 223:10,24 225:15 226:12 235:1,3 240:23 241:1,5,10,20 243:7 244:2,10,11,12 245:7,10,13,16,20,22 254:20 255:1,8 257:7 258:12,20 264:21 266:14 266:17 268:9,10,18</p>	<p>269:16,18 271:4,7,14 272:25 274:13 276:22,25 278:13 284:7,12 290:22 291:6 292:1 295:11,23 296:13 297:7,9,11 299:3 300:15 301:10,11,18 303:6 304:22 313:14 314:14,21 315:8,10 317:12 318:13,23 319:9 320:14,25 322:6 330:11 330:12 348:11 351:16 352:20 353:2,7 354:15 354:24,25 355:2,4,11 357:1,3,6,9,9,10,11 360:5,6,14</p> <p><b>informed</b> [10] 17:16 119:3,19 173:21,25 174:5 273:11 350:24 357:4,19</p> <p><b>informing</b> [2] 114:19 330:14</p> <p><b>infrastructure</b> [1] 124:9</p> <p><b>inherent</b> [9] 199:25 278:2 306:11,18,23 308:6 309:22 312:1,7</p> <p><b>initial</b> [5] 114:24 156:24 253:5 255:23 298:23</p> <p><b>initiated</b> [13] 54:25 55:13 56:5 188:11 189:16 189:21 190:15 191:9 198:8 264:9 266:6 299:2 314:22</p> <p><b>initiative</b> [2] 68:8 227:4</p> <p><b>initiatives</b> [15] 77:14 80:23 121:22 179:2 180:14,15 183:13 184:10 185:13,22 186:7 227:7 233:16 291:9 294:21</p> <p><b>input</b> [1] 142:5</p> <p><b>inquire</b> [3] 47:24 179:22 304:12</p> <p><b>inquires</b> [1] 256:5</p> <p><b>inquiries</b> [5] 174:3 187:15 232:5 285:16,18</p> <p><b>inquiring</b> [1] 303:2</p> <p><b>inquiry</b> [20] 1:1 10:22 10:24 11:3 15:10 25:3 55:22 59:13 187:20 228:15 322:18 323:4 324:13 325:1 336:19,20 338:23 344:15 362:4,7</p> <p><b>insight</b> [10] 114:7 117:22 158:5 224:2 276:9 321:20 322:7 340:15,18 351:1</p> <p><b>insights</b> [5] 284:16 317:24 344:16 345:22 347:4</p> <p><b>instance</b> [1] 296:3</p> <p><b>instead</b> [4] 27:25 304:19 304:23 305:20</p> <p><b>Institute</b> [1] 215:12</p> <p><b>instituted</b> [1] 194:13</p> <p><b>instruct</b> [1] 318:2</p> <p><b>instruction</b> [1] 318:5</p> <p><b>insurance</b> [4] 62:20 265:12,17 290:2</p> <p><b>insurances</b> [1] 304:25</p> <p><b>insure</b> [4] 16:23 17:2</p>	<p>25:4 216:25</p> <p><b>insuring</b> [2] 174:17 233:2</p> <p><b>integral</b> [1] 306:5</p> <p><b>Integrated</b> [2] 1:11,18</p> <p><b>integration</b> [1] 87:18</p> <p><b>intend</b> [2] 234:8 341:21</p> <p><b>intended</b> [2] 313:6 322:4</p> <p><b>intending</b> [1] 310:18</p> <p><b>intense</b> [10] 137:18 182:4 219:8 228:18 278:8 300:6 323:9,14,23 324:11</p> <p><b>intensely</b> [2] 67:16 113:5</p> <p><b>intensive</b> [2] 52:19,23</p> <p><b>intention</b> [3] 193:13,14 193:15</p> <p><b>intentionally</b> [1] 355:4</p> <p><b>interest</b> [13] 14:24 15:4 17:9 27:10 29:18 31:17 69:24 70:2 172:16 223:1 243:24 251:2 352:12</p> <p><b>interested</b> [3] 222:17,19 348:2</p> <p><b>interim</b> [1] 92:11</p> <p><b>internal</b> [6] 67:9 157:10 192:6 193:7 338:6 344:4</p> <p><b>internally</b> [4] 75:2 77:5 121:5 133:9</p> <p><b>interpret</b> [2] 307:21 313:4</p> <p><b>interpretable</b> [1] 293:7</p> <p><b>interpreted</b> [5] 194:19 194:19 231:13 255:16 312:23</p> <p><b>interview</b> [6] 71:13,22 71:24 206:25 256:5,7</p> <p><b>introduced</b> [2] 42:6 70:21</p> <p><b>introduction</b> [2] 27:14 73:8</p> <p><b>introductions</b> [1] 104:20</p> <p><b>investigate</b> [2] 28:20 217:2</p> <p><b>investigating</b> [1] 212:14</p> <p><b>investigation</b> [1] 28:12</p> <p><b>investigational</b> [1] 286:3</p> <p><b>investigations</b> [1] 285:16</p> <p><b>investment</b> [1] 114:12</p> <p><b>investments</b> [2] 114:20 119:12</p> <p><b>invitation</b> [1] 104:13</p> <p><b>invite</b> [1] 82:1</p> <p><b>invited</b> [2] 162:19 164:3</p> <p><b>involve</b> [2] 85:11 157:9</p> <p><b>involved</b> [64] 15:9 19:9 23:24 24:20 54:10 60:1 67:9,16 70:6 85:10 98:21 101:3,12 104:20 105:1 106:3,10 113:5 125:3 126:13 131:1 149:1 174:17 175:16,19,21,24</p>	<p>176:8,10,18,19,23 177:23 177:24 178:1 179:19,21 181:9 216:22 223:19 239:8 250:16 254:11,15 255:4,6,18,22 256:1,2 257:7,13,15,16,17,18,22 272:18 276:21 280:17 317:20 329:24,24 350:3</p> <p><b>involvement</b> [7] 63:24 68:9 99:1 147:12,17 148:24 230:5</p> <p><b>involves</b> [1] 161:25</p> <p><b>involving</b> [3] 245:11 253:2 324:21</p> <p><b>ironically</b> [1] 33:20</p> <p><b>issue</b> [247] 11:23 12:12 12:20 13:20 14:7,17,23 15:15,17 16:10,19 17:8 17:9,15 18:2 27:22 44:16 68:4 69:5,12 70:7 74:12 78:14 81:23,24 82:3,10 86:23 93:5,6,8 94:10,22 94:24 98:7,11,25 99:7 99:11,12,22 100:20 101:8 101:13,19,25 102:13,18 102:20 103:15,15 109:10 113:16 116:24 117:4,10 117:20,23 118:13,18,19 118:20,20 119:4,22,22 122:14,18,22 123:4,16 124:20 125:2,5,20 131:8 132:3 134:15 136:12,20 136:21 137:3,19 138:3,9 138:11,19,25 139:1,4,8 139:8,12,13,14 140:3,16 141:3,6,10,16 142:13 145:24 146:4 149:1,5,13 152:1 154:21,21,22 155:9 155:17,18 156:4,8 159:18 160:15,22 161:8 169:6 171:20 181:13 182:17 183:5,6,11 184:24 189:15 190:24 191:13,19,22 192:5 193:17,18,24 195:16 196:5,18,24 198:15 213:1 217:18 219:6 230:5 234:22 235:22 239:20 241:3 242:8 243:6 245:11 246:13,18 248:4,10 249:23 250:15,22 251:1 253:6,6 254:16 255:13 256:20,23 261:23 264:7 268:12,22 269:3,6,15,23 273:10,18,19,24 275:2 275:10,21,23,24 276:7 277:15 278:1,6,9 279:10 279:24 280:1,14 283:5 283:21,22 284:21 285:8 289:3 291:11 296:23 300:7 307:20,25 308:3,9 314:9,11 315:25 318:13 320:22 335:12,14 336:25 344:20,22,25 345:9 347:16 348:7,10,24,25 349:3,10,19 350:10,12 350:24 351:14,17,20,21 352:3,15 353:1,12,24 354:1,2,7 355:6 356:14 358:24 359:9 360:13,15</p> <p><b>issues</b> [53] 44:25 72:20</p>
--	--	---	---	--

77:11,19 78:6 81:24 82:5  
85:9,11 86:14 105:10  
107:23 113:23 114:23  
115:6 118:25 119:1 122:7  
123:9,23 124:5,14,14,15  
126:5 141:7 142:3 150:10  
154:4 158:24 181:17  
190:10 196:12 201:11  
240:2,21 302:8 306:13  
308:15 309:20 311:20  
313:1 326:7,8,10 334:17  
334:23,24 338:16 343:4  
343:5 350:22 352:16

**item** [18] 117:11 131:7  
131:14 132:18 133:8,12  
133:13,18 134:1,3,7,13  
146:13 163:25 239:5  
281:1,9 283:15

**items** [4] 32:8 35:8,15  
129:5

**itself** [26] 24:2 35:4 77:9  
87:25 88:5,11,12 89:5  
102:20 113:14,25 121:7  
121:14 123:7 131:8  
145:22 152:10 174:17  
187:17 194:18 226:24  
268:21 289:18 305:21  
332:14 339:13

**-J-**

**January** [17] 62:6 70:12  
79:16 91:11,16 96:22  
97:16,21 113:4,11 128:25  
128:25 137:24 145:18  
166:3 188:1 352:1

**Jennifer** [1] 1:16

**live** [1] 38:18

**job** [2] 69:2 147:6

**John** [17] 11:7 17:13 23:5  
66:13 91:11,16 105:18  
105:20,23,25 149:22  
157:4 166:14 167:17  
243:18 245:23 317:22

**John's** [15] 70:23 71:8  
72:2 106:19 172:5 173:5  
184:2 187:19 202:4,22  
206:3,10,13 362:8,11

**joint** [1] 212:24

**judgment** [1] 186:8

**Judy** [2] 362:2,13

**July** [11] 57:11,13 91:5,8  
91:22 92:20,23 93:2  
214:24 261:24,24

**jump** [1] 117:5

**June** [15] 32:10 91:13  
92:25 93:2 220:21 223:23  
224:12 225:7,22,24 226:1  
226:14 255:6 299:3 300:5

**junior** [2] 67:19,21

**jurisdiction** [1] 63:17

**jurisdictions** [1] 67:24

**Justice** [3] 1:3 10:11  
362:6

**-K-**

**Kara** [1] 1:10

**Keats** [3] 90:17 91:2  
108:3

**Keats'** [1] 91:5

**keen** [2] 248:15 249:1

**keep** [6] 74:1 107:22  
208:13 256:17 304:4  
344:10

**kept** [6] 260:6 302:18,21  
302:23 303:12,15

**key** [10] 34:19 105:16,17  
107:14 172:10 193:14,15  
193:25 194:24 198:3

**kind** [54] 67:3 68:22 78:5  
81:2 82:2 99:13 102:4,6  
114:5,25 128:12 139:22  
154:11 156:25 159:20  
160:18 179:14 180:12  
187:9 204:12 224:16  
228:10 230:6 244:17  
254:3 257:19 263:16  
266:10 267:15 276:25  
284:22 292:20 295:10,22  
300:17,22 305:22 309:15  
319:1,7,12 320:2 322:10  
322:18,21 323:16 324:21  
327:6 329:20 332:25  
334:12 337:9 339:17  
360:5

**kinds** [3] 69:14 85:12  
232:15

**knew** [18] 11:1 29:14  
45:20 105:16 108:17  
109:1 131:8 134:8 162:24  
180:25 185:8 243:18,21  
247:23 274:14 278:23  
319:16,18

**knowing** [4] 266:14  
268:19 290:22 296:22

**knowledge** [33] 23:16  
23:18 27:22 64:15 72:6  
94:11,14,22 95:2,4,10  
99:13,16,22 107:4 114:8  
149:4 154:20 158:5 163:3  
166:22 173:24 237:4,23  
276:4 278:16,19 291:24  
294:8,10 314:17 330:16  
358:8

**known** [6] 46:24 99:18  
108:15 127:22 208:16  
230:17

**-L-**

**l** [3] 208:21,21,21

**lab** [36] 16:23 31:17 64:19  
72:19 125:9 175:19  
185:11,24 186:10,12,18  
186:22 187:4 189:23  
202:16,17 228:5,6,11  
229:21 231:1,24 264:9  
286:9 287:17 289:2 290:7  
291:19 292:15,20 294:11  
294:22 342:25 343:16,17  
350:6

**laboratories** [2] 192:25  
307:8

**laboratory** [34] 63:16  
63:21 64:2,9,25 65:22  
72:12,16 125:15 172:5

179:3 185:21 199:1  
200:24 201:23 206:2  
207:25 208:4,10 215:11  
229:19 231:21 232:21,25  
235:12 286:22 292:17  
293:1,3,6,9 308:11  
326:19 338:5

**labour** [2] 52:18,23

**Labrador** [11] 74:24  
88:9 99:10 279:22 287:11  
288:25 289:12,18 305:14  
362:8,11

**Labrador-Grenfell** [1]  
1:17

**Labradorians** [1] 276:1

**labs** [4] 199:24 289:7  
293:5 341:9

**lack** [4] 103:20 119:23  
295:10,22

**laid** [1] 69:21

**Laing** [2] 1:10 20:24

**language** [1] 334:13

**lapse** [1] 293:20

**lapsed** [1] 226:1

**large** [7] 22:4 65:25  
114:9 195:23 273:19  
275:25 326:21

**larger** [5] 13:24 157:2,4  
159:12 161:16

**Larkin** [1] 214:9

**last** [25] 18:8 24:14 38:1  
38:22 90:21 96:18 98:1  
114:11 116:1 130:16  
206:20 207:15 214:12  
256:21 280:25 281:7  
289:16 292:12 293:18  
299:3,4 300:5 341:21  
342:7,12

**late** [4] 33:8 36:2 57:11  
114:5

**latest** [5] 157:24 169:15  
171:10,12 215:14

**latter** [1] 298:13

**lawyer** [2] 265:11,12

**lawyers** [3] 257:14  
265:17,18

**lay** [1] 315:12

**lead** [5] 15:10 26:11  
67:12 98:22 171:23

**leader** [1] 65:14

**leading** [2] 278:9 324:11

**learn** [7] 41:9 98:24 99:6  
104:4 299:23 307:25  
342:5

**learned** [5] 173:14  
253:15 255:2 261:11  
295:17

**learning** [2] 306:1  
310:20

**least** [5] 38:13 126:2  
127:15 243:9 331:25

**leave** [5] 46:13,14 68:23  
93:17 272:4

**leaving** [2] 23:22 24:2

**led** [2] 41:24 301:14

**left** [14] 17:24 23:6 61:5  
92:20 129:1,15 156:4  
183:19 186:1 197:23  
204:5 264:8 278:10 343:6

**legal** [30] 171:25 188:10  
188:12,16,20 189:15,17  
189:20 190:5,10,14,15  
190:16 191:8 192:16,22  
196:12 197:2 198:7,9  
264:23 265:2,3,13,20  
266:6 267:9 268:11,16  
268:19

**legislation** [24] 76:6,8  
76:14,17 78:17,25 82:20  
83:4,10,18,21 84:3,14  
84:19,22,24 85:4,13,23  
85:25 86:2,4,4 89:6

**legislative** [1] 76:4

**length** [1] 11:2

**lengthy** [3] 156:23 267:4  
344:2

**lens** [1] 352:22

**less** [1] 271:25

**lesser** [1] 15:8

**letter** [6] 31:24 32:2,5  
35:4 205:12,18

**letting** [1] 135:2

**level** [22] 93:14 99:21  
111:5 121:9 126:25 127:1  
128:24 156:25 180:24  
181:11 183:19 184:7,20  
199:7,14 226:25 245:4  
246:9 275:20 285:17  
293:4 358:11

**levels** [2] 323:24 324:22

**liaison** [3] 64:2 110:12  
110:20

**life** [4] 62:20,21 108:17  
213:8

**light** [2] 285:22 337:2

**likely** [4] 26:5 159:6,9  
159:11

**limitations** [1] 294:1

**limited** [1] 264:24

**line** [5] 111:19 131:7,14  
254:19 281:1

**lined** [3] 134:13 281:9  
283:15

**lines** [3] 7:12 32:5 111:15

**link** [1] 64:4

**list** [9] 3:1 121:11,11,24  
124:16 127:25 128:1,8  
172:2

**listener** [1] 146:11

**listening** [2] 260:10  
355:7

**listing** [1] 223:4

**litigation** [1] 191:1

**living** [3] 247:15,19,23

**located** [1] 100:5

**location** [1] 230:14

**logic** [1] 268:15

**logs** [1] 217:1

**long-standing** [1] 309:5

**long-term** [2] 62:24  
87:15

**look** [28] 47:7 60:4  
109:20 121:24 143:9  
150:16 155:14 157:22  
169:17 180:13 205:11  
206:19 209:9 212:4 224:4  
230:18 234:9 285:13  
301:2 303:22 311:20  
314:25 315:12 322:20  
333:7 341:3,6 361:2

**looked** [7] 50:13 118:11  
118:12 158:2 229:11  
322:12 342:24

**looking** [20] 25:2 32:2  
35:3 40:13 53:3 108:24  
121:14,17,23 128:14  
130:18 197:24 219:24  
229:10 242:20 262:3  
298:6 311:24 329:5  
351:14

**loop** [1] 350:17

**LUNCH** [1] 197:14

**luncheon** [1] 197:8

**-M-**

**Madam** [4] 4:5 24:18  
59:9,25

**magnitude** [5] 115:6  
118:21 275:2 351:20,21

**main** [1] 38:15

**Majesty** [1] 1:9

**major** [6] 114:12,14,19  
119:5 273:18 338:11

**makes** [1] 85:14

**manage** [2] 88:4 357:20

**managed** [2] 326:14  
335:11

**management** [24] 16:21  
62:25 72:18 93:6 124:15  
125:1,21,22 126:7,12,21  
127:14 198:24 199:15,25  
200:21 216:17 232:17  
293:1 301:11,12 326:13  
326:24 335:9

**manager** [2] 64:3 212:25

**managing** [1] 309:22

**mandated** [2] 77:3 85:8

**Mandy** [1] 1:8

**manner** [3] 208:17  
297:14 349:7

**manual** [3] 213:6,13,16

**mapped** [1] 199:9

**March** [24] 28:4 33:21  
34:6,8,16 36:6,7,8 71:15  
142:23 143:16 150:17  
151:9 166:3 171:9,14  
204:25 206:13 207:2,4  
207:12 214:11,17 254:17

**Margaret** [1] 362:6

**margin** [4] 19:4 20:17  
58:5,13

**Mark** [1] 1:15

**MARKED** [1] 61:19

**Marshall** [2] 66:11 69:8

Inquiry on Hormone Receptor Testing

<p><b>mass</b> [1] 309:20  <b>match</b> [1] 9:13  <b>material</b> [4] 55:6 74:1 145:8,13  <b>materials</b> [1] 73:4  <b>math</b> [1] 19:16  <b>matter</b> [17] 26:21 27:14 28:8 41:20 73:13 74:7 136:2 144:16 183:8 252:24 266:15 267:22 269:8 285:17 318:7,10 362:3  <b>may</b> [192] 11:16,16 12:8 15:9 23:19 32:2,10 35:4 36:2,2 38:7,13 61:13 64:16 66:1,1 67:5,8 68:3 68:4,18,19,21 71:10,18 81:25 82:1,3,6 83:8 86:13 92:24 94:15 98:13 98:14,15 102:2,11,15,17 102:24 108:19,22,24 115:1,17,17 117:6,6,17 122:7 127:19 133:17 135:24 136:14,25,25 137:2,21,24 140:2,8,15 141:23 147:21,22 148:5 148:6,13 149:11 152:8,9 154:16,22 155:10 156:3 156:23 166:11,14,24 171:23 172:17 186:1 194:17,19,24 195:14,15 196:1,6 198:1,1 199:4,7 203:12 205:10,19 206:8 207:11 209:14,24 210:6 217:23 218:4,13,16 219:6 220:13 221:8 223:22 226:2,20 228:14,18 232:6 232:7 240:17 244:3,3 247:10,25 250:20 251:14 251:15 253:3,4 256:17 256:18,21 257:3 258:2 260:21 261:24 263:20 265:20,21 275:8,22 283:21 285:4 287:17 288:7 291:3 294:9 296:25 300:4 303:7,8 304:8 308:3 309:17 310:15 311:10,23 313:8 316:5 316:21,23 317:2 326:11 327:17,23 328:9 331:11 336:13,20 337:13 340:12 341:16 342:12 344:20 345:5 348:19,24,25 350:3 351:6,12,19 352:4,8,11 352:18,25 354:5 356:19 357:5,5 358:15 359:14 359:21 361:3  <b>MCP</b> [3] 87:25 88:16 135:18  <b>mean</b> [90] 7:20 10:3,13 16:18 17:13 26:9,12,25 32:20 36:5 46:25 50:16 51:6 58:25 59:4 63:23 66:20 95:6 105:23 108:15 109:6,7 117:17 138:19 145:17 146:11 148:13 155:20 157:13 158:1,2 159:20 160:12,12 161:8 161:8,12,22 168:19 175:23 181:19 183:2 188:14 189:14 214:22</p>	<p>219:2 222:9 233:24 250:10 251:8 266:3 267:4 274:10 275:10 277:7 278:7,23 279:3 284:10 290:16 292:9 300:2 302:23 309:5 310:6 311:16 313:4 314:16 316:23 318:15 320:3 322:10 325:24 331:11 332:16 336:12,25 338:16 342:17 344:4 347:20,23 347:24 349:3,17 351:21 354:21 355:25 356:22 360:7  <b>meaning</b> [2] 176:15 323:12  <b>meanings</b> [1] 237:8  <b>means</b> [3] 134:16 230:12 362:10  <b>meant</b> [9] 47:25 48:1 57:24 100:4 176:16 177:19 190:3 199:11 312:18  <b>meantime</b> [1] 302:6  <b>measures</b> [10] 16:21,25 173:8 174:18 178:17,19 198:22,24 200:18 264:10  <b>mechanism</b> [5] 81:3 144:19 216:25 309:21 314:25  <b>mechanisms</b> [4] 306:20 312:2 338:6 344:5  <b>media</b> [46] 5:23 6:5,13 6:22 7:13 10:8,9 12:10 27:24,25 54:17 55:5 99:12,14 100:21,22 101:23 102:12 137:6,9 137:22 145:6 146:4 149:5 149:7,12 150:11 153:22 154:3 156:16 242:8,16 243:10 253:15 260:11 261:12 278:1 295:17 296:17 305:20 306:2 308:1 310:21 316:21,24 317:5  <b>medical</b> [7] 1:15 63:15 88:17 95:22 125:10 229:21 230:7  <b>meet</b> [1] 14:20  <b>meeting</b> [50] 4:17 6:15 7:11 11:5,19,21 18:24 19:8 20:18 41:3,4 42:19 42:20,25 43:4 44:4,4 45:25 50:5 58:17,23 67:6 68:3 82:4 155:25 156:5 157:15 158:3 162:9 167:23 168:14,17 169:1 170:2 199:4 218:3 242:21 244:6,18 246:7 264:8 271:25 272:6,12,17 273:6 318:15 321:17 345:25 346:4  <b>meetings</b> [13] 22:13 68:1 68:13,18 69:16 99:4 101:3,6 103:15 106:1 213:4 323:11 359:14  <b>meets</b> [2] 155:23 239:9  <b>member</b> [9] 75:7 99:24 279:8,9 280:1 288:21,23</p>	<p>295:25 306:18  <b>members</b> [10] 1:13 9:12 44:13 172:12,19 175:1,6 175:8 177:18 311:22  <b>memo</b> [1] 22:19  <b>memory</b> [2] 161:5 170:12  <b>mention</b> [1] 233:8  <b>mentioned</b> [2] 17:23 22:3  <b>Mercy</b> [1] 214:22  <b>merit</b> [2] 264:1 268:25  <b>message</b> [3] 34:20 179:14 305:2  <b>messages</b> [5] 172:10 193:14,16 194:24 198:3  <b>met</b> [12] 81:7,14,20 86:17 105:23 206:20 239:8 317:9 318:9 341:22 346:4 346:6  <b>methods</b> [1] 213:15  <b>MHA</b> [1] 62:2  <b>MHAs</b> [1] 314:9  <b>Michael</b> [5] 295:7 305:17 309:16 313:10 314:8  <b>Michael's</b> [1] 307:17  <b>microscope</b> [1] 208:4  <b>mid</b> [8] 113:4,10 128:25 150:3 351:12,19 354:4 360:18  <b>midday</b> [2] 150:7 239:12  <b>middle</b> [3] 117:6 285:12 300:4  <b>might</b> [63] 9:7 17:8 28:12 28:21 69:25 77:19 82:2 87:24 92:12 98:21 105:9 107:6 108:25 110:9 111:2 112:8 117:21 119:11,11 122:24 133:21 135:9 136:7 147:22 155:20 175:14,15 187:8,9 189:13 194:3,22 210:12 232:24 233:24 251:17 259:10 266:8 282:11 292:23,24 301:3 310:7 311:21 313:5 315:12 321:17 322:11,14 326:10 334:3,5 338:8 339:19 340:16,17 341:3 341:9,10,10,12 342:10 359:1  <b>mind</b> [24] 19:4 58:11,18 116:10 123:23 134:15 135:2 137:1 152:3 169:21 177:16 181:23 203:14 208:13 211:1 214:12 215:8 217:17 240:4 256:17 273:25 283:4 342:1,13  <b>mine</b> [1] 279:3  <b>minister</b> [122] 11:7 13:14 14:18 15:25 16:5 27:15 27:21 62:5,7,10 66:6,12 66:16 67:1,2,3,4,5,7,15 67:19,21 69:3,4,8,17,18 69:22,23 70:11 72:24 73:11 74:19 75:11 76:15 76:19 77:7,21 79:23</p>	<p>80:22 81:5,25 84:16,20 85:5,21 86:1,13,15 89:12 89:22 90:14,15,19 91:17 93:8,21 96:2 97:16 103:20 104:5,9 105:9,21 106:12,13 107:10 108:13 109:12,15 112:17 113:10 113:14 116:9 117:1 118:7 120:11 123:20 132:8,21 135:5 136:14 139:6,21 140:23 141:13 142:6 144:19,21 145:18 147:6 147:6,7,9,16,20 161:23 190:19 193:22 194:7 210:13 224:25 245:9 248:24 268:7 275:17 277:14,16,17,20 279:21 285:20 288:10,13 295:8 305:18 313:13 344:10,21 352:1,19 355:9  <b>Minister's</b> [6] 85:9 86:5 100:7,8,17 144:13  <b>ministerial</b> [1] 350:20  <b>ministers</b> [12] 66:18,21 68:7 69:1 93:9,10,11 94:19 104:24 115:2 118:1 151:22  <b>minor</b> [2] 152:6,7  <b>minute</b> [1] 4:24  <b>minutes</b> [3] 90:4 279:18 280:8  <b>mislead</b> [1] 313:6  <b>misleading</b> [1] 30:17  <b>mistaken</b> [4] 150:8 171:23 304:10,12  <b>Moira</b> [28] 17:14 23:4 95:16 108:7,15,25 109:11 109:16 149:22 157:5 169:3 170:23 171:1 196:4 196:6,8 225:1 243:17,19 245:23 250:17 317:21,21 327:13 328:14,17 329:4 332:15  <b>moment</b> [25] 16:10 46:14 72:2,10 78:13 113:24 119:17 142:8 155:21 156:24 160:16 164:21 196:11 223:22 227:7 234:3 248:11 250:12 264:5,25 268:22 291:1 306:19 327:21 349:13  <b>moments</b> [2] 278:10 297:4  <b>Monday</b> [1] 319:3  <b>money</b> [16] 110:4 113:18 131:18 133:2,5 135:19 135:20 252:22 281:4,16 281:25 282:4,9,14,24 283:10  <b>monitoring</b> [2] 216:24 286:15  <b>month</b> [4] 10:9 170:1 214:12 218:2  <b>months</b> [18] 16:1,8 30:23 92:14 93:1 114:9 116:5 116:25 118:6 123:19 136:18 140:23 163:2,5,9 250:3 266:15 269:8</p>	<p><b>morally</b> [1] 31:20  <b>morning</b> [40] 4:2,5,8,10 13:8,10 60:21,23 61:14 89:25 104:14 135:1 137:6 137:14 153:22 155:24 158:8 160:20 163:24 165:5,8 202:2 219:4 227:3 239:1,5 250:13 266:9 268:5 272:7 280:23 305:9 316:16 317:17,18 319:1 345:14 354:22 360:17 361:7  <b>mornings</b> [1] 155:22  <b>Morris</b> [1] 214:9  <b>Moss</b> [2] 362:2,13  <b>most</b> [14] 60:13 61:10 67:14 85:23 115:7 147:7 150:15,19 151:6 158:10 192:15 222:5 277:25 316:9  <b>mostly</b> [3] 108:16,20 111:9  <b>Mount</b> [22] 5:12 9:18 15:16,20 38:2,23 39:8 46:10,19 47:1 49:11 50:17,22,23,23 51:17,19 52:3,20 53:5 70:22 235:14  <b>mouse</b> [2] 61:9 205:13  <b>move</b> [10] 14:17 78:2 80:25 181:24 186:11 247:21 316:5 339:10 351:3 353:22  <b>moved</b> [4] 10:10 27:9 139:18 267:10  <b>moving</b> [3] 18:21 93:16 252:25  <b>Ms</b> [496] 2:3,7 4:2,3,4,9 4:23 5:3,18 6:6,24 7:9 7:17 8:4,11,18,22 9:21 10:17 11:4,10,20 12:2 12:22 13:2 23:12 60:7 60:12,20,24 61:1,3,20 63:4,14,22 64:6,12,22 65:5,9,19 66:4,10,67:18 68:11,24 70:4,19,16 71:1 71:12,20 72:5,21 73:2 73:15,25 74:9,17 75:22 76:10 77:4 78:10,23 79:3 79:10,14,20 80:5 81:9 81:13,18 82:7,17,23 83:3 83:15,16 84:5,10 86:3 86:11,22 87:2 88:21 89:2 89:11,24 90:1,7,8,18,22 91:1,7,14,20 92:2,6,15 92:19 93:3,19,24 94:6 94:21 95:3,9,13,17,21 95:25 96:5,9,14,20 97:1 97:6,10,14,24 98:4,10 98:23 99:19 100:2,10,14 100:19 101:2,11,16,22 102:21 103:1,6,12,19 104:2,10 105:14 106:5 106:21,25 107:8,17,21 108:1,6,11 109:2,13 110:11,16,23 111:6,14 111:18 112:1,9 115:4,12 115:22 116:4,8,22 117:7 117:13 118:4,10,17 119:20 120:8,16 122:4</p>
--	---	---	--	--

<p>122:13 123:2,14 124:18 124:25 125:8,18 126:10 127:5,10 129:11,24 130:5 130:11,17,23 131:16 151:5,5 154:14 163:23 182:24 183:18,24 185:1 185:25 186:19,25 187:5 187:14,24 188:7,21 189:1 189:11 190:1,2,22 191:3 191:7,18,23 192:8,13,20 193:12 195:4,12,19 196:3 196:15,22 197:10,16,17 197:22 198:18 199:21 200:1,8,16,23 201:5,14 201:20 202:20 203:10,21 204:3,13,21 205:4,9,17 205:24 206:6,9,24 207:3 207:7 209:3,11 210:25 211:9,13,18 213:11 215:3 215:19,23 216:2,7,19 217:12 233:6,17,22 234:17 235:2,7,25 236:12 236:19 237:2,16,21 238:3 238:10,15 239:21 240:3 240:10 241:4,9,21 242:2 242:7,14,19 243:16 244:7 244:19 245:18 246:12,17 246:23 247:2,24 248:7 248:13,20,25 249:5,16 249:25 250:6 251:3,9 252:3,8,12 253:1,9,23 254:5 255:10 256:3,11 256:22 257:24 258:10,16 258:21 259:2,6,15,21 260:20 261:6,17 262:2,8 262:13 264:6,14 265:1 265:15,23 266:23 267:11 267:20 269:2,25 270:4,8 270:13,18,22 271:5,19 271:23 272:10,22 273:4 274:2,7,17 275:6,18 277:1,6,11 278:15,20,25 279:5,13,16,19 280:4,11 280:12 281:8,13,17,24 283:3,8,13,18,25 284:18 285:1,11 287:1,25 290:9 290:15,20 291:23 292:4 293:13,21 294:5 295:2,7 297:23 298:14 299:9,17 300:13 301:13,24 302:4 302:15,20 303:18 304:3 304:14 305:7,15,17 307:14,17 308:13,24 309:4,10,16,25 310:17 311:1,5,9,15 312:10,17 312:21 313:9,10 314:7 314:13,19 315:6,14,18 315:24 316:4,19 317:8 318:1,8,9 319:25 321:9 343:20 344:18 345:4,8 345:13,17,24 346:9,13 346:18,24 347:11,17 348:9,14,18,22 351:5,10 352:24 353:5,16,25 354:12,16 355:15,20 356:5,12 357:12,17,24 358:3,13,20 359:5,13,18 360:1,10,22 361:1,5,8 361:10</p> <p><b>multi-header</b> [1] 208:4 <b>multiple</b> [9] 179:18,21 180:6,7,9 181:1,8 328:16</p>	<p>335:4 <b>Mundon</b> [14] 96:19,22 149:23 151:5 153:14 154:14 156:14 163:23 166:18 167:16 220:11 250:18 316:13 317:22 <b>must</b> [3] 20:8 143:19 208:15</p> <hr/> <p style="text-align: center;">-N-</p> <hr/> <p><b>name</b> [4] 4:10 90:17 186:24 211:23 <b>names</b> [2] 71:19 302:24 <b>national</b> [5] 198:25 231:18,19 233:24 292:14 <b>nature</b> [19] 152:5,21,24 154:5,8 160:13 162:17 198:13 219:11 223:17 263:15 271:2 318:16 320:2 321:5 322:9 323:22 349:25 355:13 <b>necessarily</b> [25] 8:7 66:24 80:12 94:18 109:6 110:19 126:8 135:10 136:2 138:20 141:2 144:12 148:9 158:14,15 165:1 176:13 177:9 181:2 194:5 226:3 243:14 280:23 341:1 343:19 <b>necessary</b> [4] 77:15 142:8 247:21 281:5 <b>necessity</b> [1] 87:20 <b>need</b> [26] 61:9 74:8 119:13 121:19 132:19 133:12,13,19 154:5 156:6 182:11 226:20 252:20,24 282:10,21 289:8 301:3,7 307:10 313:14 314:3 318:24 326:1 334:15 335:24 <b>needed</b> [58] 64:17 114:2 114:5,22 116:20 117:24 118:2 119:3,3,9,13,18 119:19 135:10 138:25 141:7,8,9 142:9 150:3 159:24 164:8 182:19 236:11 244:25 245:1 249:13 276:6,9 284:11 284:14,17 301:1 314:24 314:25 315:2,4 317:23 317:24 322:7,20 325:1,4 327:2 334:16,17,22,24 335:10,14 344:9 347:6 349:14,16 351:2 353:22 357:2,10 <b>needing</b> [3] 139:16 282:19 357:1 <b>needs</b> [2] 87:21 252:20 <b>negative</b> [11] 47:21,22 47:25,25 48:18 208:7 216:1,6,11 235:14 236:10 <b>negatively</b> [2] 28:13 237:12 <b>negatives</b> [2] 236:23,24 <b>negotiation</b> [1] 128:13 <b>never</b> [19] 25:5 26:15 29:24 30:3,10,18 31:10 46:10 47:2 68:16 108:15</p>	<p>194:24 229:8 295:11,23 298:20 305:23 310:23 326:23 <b>new</b> [38] 61:12 76:7 80:24 83:4,17 84:2,18,21 85:13 86:4 89:6,17 121:22 133:2,5 144:25 151:10 152:7,10 166:13,22 173:8 178:19 179:8 208:14 288:25 289:1,20,22 291:8 296:7 309:12 333:6,19 334:11 351:12,12 360:13 <b>Newbury</b> [1] 1:16 <b>Newfoundland</b> [12] 49:13 74:24 88:8 99:10 279:22 287:11 288:24 289:12,18 305:14 362:8 362:11 <b>Newfoundlanders</b> [1] 275:25 <b>news</b> [18] 10:5 36:3 39:21 102:15,16 117:11 146:7 146:12,13,22 154:16 155:9 160:23 161:10 163:25 239:5 260:11 285:22 <b>next</b> [20] 38:6 60:11,19 104:14 173:4 179:17 180:3 208:13,19 212:10 220:14 247:3 250:20 253:10 278:12 279:18 307:19 316:16 317:17,18 <b>night</b> [1] 317:16 <b>nine</b> [1] 298:18 <b>NL</b> [3] 1:9,15,16 <b>nobody</b> [8] 52:22,24 57:22 173:19 181:9 183:20 224:10 226:11 <b>none</b> [7] 5:14 8:19 44:8 71:5 72:10 98:13 136:19 <b>noon</b> [1] 239:14 <b>nor</b> [10] 101:12 145:20 163:25 166:18 173:19 192:9 198:6 200:14 238:6 265:8 <b>normal</b> [11] 23:4 64:16 104:20 111:15,19 112:2 142:16 143:6,24 151:20 161:25 168:7 306:16 <b>normally</b> [6] 111:17 120:17 153:24 169:1 184:12 239:9 <b>North</b> [1] 62:2 <b>notation</b> [1] 18:25 <b>notations</b> [3] 18:13,18 18:18 <b>note</b> [117] 4:17 11:18,24 12:14,21 14:13,13 17:16 18:12 19:13 22:22 23:2 23:3,5,9,19,23 24:2,5 33:6,21 34:10,11 37:12 37:16 39:10 40:14 43:20 48:12 57:1,3 116:23 117:15,18,22 136:14,16 139:10,18 142:17,22,25 143:3,12,16 144:7,12,24 145:21 150:15,18 151:6 151:8 152:10 155:15</p>	<p>157:22 158:2,9,12,14 169:15,18 171:7,9 172:9 172:17 178:5,7 179:1,17 188:9 189:13 192:6 193:7 194:3,11,18,18 195:6 196:7 197:24 198:19 199:13 211:1 217:17,19 218:2 225:16 227:6 229:9 234:19 236:22 240:13 241:14,16,20 242:3,20 242:24 243:3,14,20 244:3 244:9,14,22 245:25 246:1 258:13 259:11 271:8 273:7 291:3 318:3 359:19 360:16,20 <b>noted</b> [1] 207:9 <b>notes</b> [51] 13:15,24,25 14:2,3 17:18,22,23 18:1 19:10 22:4,14 23:20,25 32:15,18,20 38:19 73:3 74:10,11 103:14 105:8 112:18 115:15,19,20 116:10 138:23 142:13,19 144:5,17 151:16,21 175:2 193:20,21 194:15,20,22 195:24,25 226:12 259:3 259:7,10,14 359:20 360:3 361:3 <b>nothing</b> [5] 103:2 118:1 138:2 252:15 339:13 <b>notice</b> [2] 38:17 104:8 <b>noticed</b> [1] 223:9 <b>notification</b> [1] 259:24 <b>notified</b> [4] 174:11 260:23 262:4 288:6 <b>notify</b> [1] 261:14 <b>notation</b> [13] 26:22 27:1 29:7,11,24 162:20 164:2 191:8,15,20 196:8 269:19 269:21 <b>November</b> [30] 4:17 6:15 9:14 16:7,8 18:7 37:3 39:7,18 41:3,25 42:2,5,10 43:20 44:4 45:25 50:3,5 54:1 55:19 56:25 57:4 158:17 165:25 241:23 246:1 248:17 298:2,3 <b>now</b> [154] 4:12,16 5:4 8:12,16,24 9:3,12 12:16 16:8 18:6,10 19:16 20:3 20:22 22:3,5,18 23:1,11 24:14 25:20 31:22 32:9 36:12 37:8,11,16 48:10 52:17 53:25 54:22 55:4 60:7,8 71:17 83:16 92:18 92:24 93:1 105:11 108:3 114:1 117:23,24 136:11 144:18,19 157:15 162:14 164:11 166:23 167:17 178:4 179:6,10 182:3 184:23 185:4,10 188:2 189:10,13 190:15 194:13 194:16 196:4 199:3,19 200:18 202:18 203:6 204:9 205:5 209:8 210:4 210:6 220:2 225:17 226:1 228:6 230:2,25 231:17 231:20 234:6,7,11 241:12 242:8 243:25 257:2</p>	<p>261:22 263:11,24 264:3 269:1 273:3,10 275:20 276:15,17,20 279:1,17 280:13 284:10 286:8,8 286:14 287:16,20 288:12 288:16 290:22 292:9,10 293:20 296:18,23 297:5 297:16,17,18 298:4,8,17 299:1,14 305:22 306:12 306:21 308:14 309:11 312:24 315:2 319:4 320:3 320:19 324:17 326:22 327:21 330:13 334:10 335:23 340:25 341:4,14 347:22 349:19 351:13 354:7 355:5,25 <b>number</b> [82] 6:4,8 19:8 19:15,17,22 20:9 27:7 30:23 33:24 36:12 42:6 49:15 51:25 59:16 62:17 63:2 72:8 86:14 87:5,23 88:22 112:11 132:25 133:7 159:25 182:10 198:22 207:8,10,13 209:19 212:5,10,18,22 213:6,22 214:4,13,18 215:1,10,17,21,25 216:4 216:9,15 217:13,21 235:15 236:4 237:9 238:2 240:7,16 241:13 242:10 242:23 243:19,21 244:21 250:21 257:11 269:4 270:17,19,23 271:22 273:19 274:11 275:2,25 296:4 311:20 323:24 326:21 327:7 336:20 338:13 350:5 <b>numbers</b> [58] 6:11,16 12:4 19:7 20:5,14,15,18 20:19,19 54:18 55:1 56:6 57:2,3,5,6,8,9,24 59:5 133:19 156:21 160:24 163:18 164:17 233:4 235:22 238:19,20 240:11 241:16,17 242:9 245:24 246:20 264:17 267:21,25 269:10 270:1,3,7,15,24 271:9,10 276:21 297:9 304:11 354:2,9,18 355:22 356:7 358:4,16,21 <b>numerous</b> [2] 250:14,16</p> <hr/> <p style="text-align: center;">-O-</p> <hr/> <p><b>o</b> [2] 208:21,21 <b>O'Dea</b> [1] 1:17 <b>objectives</b> [3] 80:1,2 121:20 <b>observation</b> [2] 102:2 341:12 <b>observations</b> [3] 59:21 339:17 343:9 <b>obtained</b> [1] 47:8 <b>obtaining</b> [1] 23:8 <b>obvious</b> [1] 342:19 <b>obviously</b> [48] 26:9 31:16 39:18 59:1 75:11 77:22 90:14 102:13 104:16 109:7 110:6 118:18 119:1 138:22</p>
--	---	---	--	--



<p>139:6 141:22 142:2 146:4 152:13,20 159:21,23,25 162:9,15,20 164:5,10 172:6 183:15 189:10,14 213:25 217:20 265:9 267:9 268:4 273:23 274:10 275:24 284:11 304:21 313:5 326:7,9,24 335:3 340:24</p> <p><b>occasion</b> [3] 14:19 68:2 86:17</p> <p><b>occasions</b> [4] 81:6,20 108:23 299:19</p> <p><b>occur</b> [2] 17:10 303:19</p> <p><b>occurred</b> [20] 15:2 33:10 59:17,21 104:13,22 148:6 158:17 163:23 164:1 188:13 189:18 190:18 191:11 198:10,13 320:16 334:15 344:12 346:23</p> <p><b>occurring</b> [2] 152:22 180:8</p> <p><b>occurs</b> [1] 128:13</p> <p><b>October</b> [8] 62:3 65:17 66:10 99:20 101:5,23 256:23 349:1</p> <p><b>odd</b> [3] 66:1 301:5,6</p> <p><b>off</b> [15] 50:13 100:9 144:18 194:12,14 197:23 281:2,6,16 282:5,11 283:1 287:12 290:16 331:12</p> <p><b>offer</b> [4] 93:15 265:16 353:8 356:13</p> <p><b>offered</b> [2] 181:2 267:12</p> <p><b>office</b> [12] 85:9 100:5,7 100:8 218:13 219:9 220:7 221:8 272:8 300:10 346:5 346:5</p> <p><b>officer</b> [2] 177:6,15</p> <p><b>official</b> [3] 102:4 147:11 170:23</p> <p><b>officials</b> [64] 16:10 22:6 27:16 29:8 77:23 80:18 82:5 88:19 93:14 119:10 119:25 121:9 122:23,23 127:2,3 128:4,5,19,23 129:10 131:10,10 136:19 137:14,22 138:1,21 140:20 144:6 149:14 151:4 164:9 165:20 182:5 182:6 194:1 223:23 224:25 225:14 242:22 243:12 244:18 245:7,10 245:15,21 251:11 257:4 258:22,25 272:12,19 283:4 291:7 297:13 302:11 323:25 325:11,11 344:24 359:8,12,15</p> <p><b>old</b> [3] 85:3 86:1 170:1</p> <p><b>omission</b> [1] 240:16</p> <p><b>once</b> [6] 16:17 59:2 70:20 107:10 189:20 191:8</p> <p><b>oncologists</b> [4] 254:12 255:25 257:17 286:12</p> <p><b>oncology</b> [2] 131:3 289:6</p> <p><b>one</b> [131] 13:23 18:1,17 18:18 34:8,11,13 37:25</p>	<p>39:9 40:22 45:5 63:16 66:24 70:17 71:16 79:4 82:13 85:1,13,19 87:10 92:25 94:22 104:13 106:3 106:11,20 107:14 112:24 119:6,6 123:22 129:25 135:8,12 137:7 138:20 138:22 142:18 143:6,20 150:15,23 158:10 168:14 170:13,15 171:10,12 172:3 179:25 180:20 192:24 193:21 199:19 200:17 204:10,11,14 205:20 210:18 211:14 212:10 219:21 220:15,20 221:6 224:7,25 227:8 232:13 234:10 240:19,21 243:4 244:24 245:12 250:10,14,14 257:12 260:13,14 268:3 271:15 272:5,19 278:11 282:14 285:2 290:2,7 292:24 300:23,25 302:24 303:2 303:4 305:10 306:5 309:15,17 310:11 311:14 311:19 314:8 320:17 321:16 323:10,10,16 325:20,24 327:8 330:15 334:3,7,9,10,12 336:21 338:5 339:4 342:14 343:4 343:10,13 346:3 349:14 356:3,4</p> <p><b>ones</b> [1] 332:6</p> <p><b>ongoing</b> [18] 80:15 147:19 152:2 213:5,18 213:20,22 214:4 215:21 215:24 216:4,9,16,21 217:15 268:11 286:15 306:8</p> <p><b>Ontario</b> [1] 293:5</p> <p><b>onto</b> [1] 210:7</p> <p><b>onward</b> [2] 28:4 250:20</p> <p><b>onwards</b> [2] 36:8 228:18</p> <p><b>open</b> [4] 33:21 327:6 346:6 352:6</p> <p><b>opened</b> [1] 138:2</p> <p><b>opening</b> [5] 115:21 150:4 187:18 201:13 239:14</p> <p><b>opens</b> [1] 272:3</p> <p><b>operated</b> [1] 88:18</p> <p><b>operating</b> [8] 28:4 30:4 49:24 64:16 185:24 213:12 214:5 293:9</p> <p><b>operation</b> [3] 72:19 179:10 292:16</p> <p><b>operational</b> [6] 64:19 85:8,12 119:6 342:24 343:5</p> <p><b>Operator's</b> [1] 213:15</p> <p><b>opinion</b> [13] 198:6 267:7 267:9,18,21,24 268:6 275:7 355:16 356:13 357:18,22,25</p> <p><b>opinions</b> [1] 356:11</p> <p><b>opportunities</b> [2] 180:7 356:1</p> <p><b>opportunity</b> [5] 24:21 80:6 206:19 207:19 346:7</p>	<p><b>opposed</b> [2] 307:24 349:1</p> <p><b>opposition</b> [10] 65:10 65:21 107:6 108:21 109:3 109:10 252:9 277:22 284:4 311:21</p> <p><b>oral</b> [2] 172:25 273:6</p> <p><b>order</b> [5] 36:14 49:15 61:25 192:23 252:14</p> <p><b>organization</b> [5] 107:15 119:14 172:14 338:3,10</p> <p><b>organizational</b> [2] 114:15 119:7</p> <p><b>organizations</b> [1] 67:8</p> <p><b>orientation</b> [13] 69:13 73:12,20,22 74:3 103:21 104:3,5,22 112:10,23 113:21 115:1</p> <p><b>origin</b> [1] 340:17</p> <p><b>original</b> [11] 15:16 35:9 46:20 49:12 51:17 52:4 52:5,6 53:6 94:7 207:22</p> <p><b>originally</b> [5] 51:21 52:1 83:8 235:13 354:3</p> <p><b>ORs</b> [1] 214:19</p> <p><b>Osborne</b> [169] 2:2 4:3,6 4:7,21 5:1,10,25 6:9 7:6 7:15,19 8:9,15,20 9:16 10:2,20 11:8,15,25 12:11 12:24,25 13:6,8,9,12,22 14:11 15:3,11 16:2,13 17:12 18:3,10,14 19:1 19:25 20:7 21:7,14,18 22:9,15,23 23:17 24:10 24:13,17 25:7,9,15,17 25:25 26:7,23 27:19 29:5 29:23 30:2,15,25 31:5,9 32:14,19,24 33:12,19,25 34:5,9,14,21 35:14,20 35:24 36:4,17,23 37:5 37:13,19 38:3,10,16 39:4 39:15,25 40:5,10,17,21 40:25 41:6,11,15,21 42:4 42:9,14,22 43:2,7,16,24 44:3,7,19 45:2,7,11,16 45:22 46:2,8,16,23 47:9 47:14,18 48:2,7,13,22 49:4,8,14 50:2,15,21 51:5,14 52:2,9,21 53:8 53:13,22 54:6 55:9,16 55:20 56:8,16,22 57:7 57:12,17,21 58:7,14,19 58:24 59:24 66:16 69:18 139:22 140:3,16 167:2 204:23 241:22 246:1 248:15,24 277:17</p> <p><b>Osborne's</b> [1] 250:2</p> <p><b>others'</b> [1] 144:14</p> <p><b>otherwise</b> [5] 51:6 64:23 172:25 237:22 246:2</p> <p><b>Ottenheimer</b> [4] 66:13 69:17 229:3 277:16</p> <p><b>Ottenheimer's</b> [1] 67:15</p> <p><b>ourselves</b> [2] 133:8 289:8</p> <p><b>outcome</b> [1] 171:21</p> <p><b>outcomes</b> [1] 231:4</p>	<p><b>outdated</b> [1] 334:9</p> <p><b>outlet</b> [1] 137:9</p> <p><b>outline</b> [1] 61:22</p> <p><b>outlined</b> [4] 84:14,17 199:12 306:19</p> <p><b>outlining</b> [3] 112:15 213:6,13</p> <p><b>outside</b> [10] 16:18 17:15 33:15 64:24 67:8 227:10 290:6 291:18,18 324:4</p> <p><b>overview</b> [2] 105:3 276:12</p> <p><b>own</b> [22] 4:19 17:6 29:12 31:12,18 53:11 61:6 76:4 78:17 121:6 148:24 265:11 266:9 273:25 275:11 288:7 313:18 330:15 352:11 357:4,20 359:8</p> <hr/> <p style="text-align: center;"><b>-P-</b></p> <hr/> <p><b>p</b> [2] 208:21 209:1</p> <p><b>P-0077</b> [2] 219:17,18</p> <p><b>P-0104</b> [1] 54:20</p> <p><b>P-0105</b> [2] 285:2 305:16</p> <p><b>P-0126</b> [2] 169:17 229:10</p> <p><b>P-0184</b> [1] 8:23</p> <p><b>P-0197</b> [1] 37:10</p> <p><b>P-0200</b> [4] 3:2 61:15,18 61:19</p> <p><b>P-0277</b> [1] 210:6</p> <p><b>P-0285</b> [4] 3:2 61:15,18 61:19</p> <p><b>P-0314</b> [3] 4:14 34:3 43:12</p> <p><b>P-048</b> [1] 205:11</p> <p><b>P-049</b> [2] 31:23 209:10</p> <p><b>p.m</b> [1] 361:12</p> <p><b>package</b> [1] 13:25</p> <p><b>page</b> [47] 4:16 8:24 9:3 18:9,19,22,25 34:8,11 34:13 37:11,16,17 43:12 43:19 47:7 48:16 54:21 58:1 169:17 206:11,12 206:16,17,17 207:15,22 207:24 208:13 209:12,13 209:17,22 210:6,7,22 219:18,18,19,21 220:12 220:14,15 285:2 288:1,2 295:4</p> <p><b>pages</b> [1] 10:6</p> <p><b>paid</b> [3] 123:1 282:12,13</p> <p><b>painful</b> [1] 25:5</p> <p><b>Pam</b> [1] 4:10</p> <p><b>Pamela</b> [3] 1:13 2:3 4:3</p> <p><b>panel</b> [11] 9:19 46:11,14 46:25 47:22,25 49:17 51:22 52:10 53:3 54:8</p> <p><b>paper</b> [3] 102:16 146:12 170:8</p> <p><b>papers</b> [1] 77:13</p> <p><b>paraffin</b> [1] 50:20</p> <p><b>paragraph</b> [4] 208:20 285:13 295:13 343:4</p>	<p><b>paramount</b> [1] 208:22</p> <p><b>Pardon</b> [1] 224:22</p> <p><b>paring</b> [1] 121:25</p> <p><b>parliamentary</b> [28] 62:4 66:5,14,17,20,23 67:20 68:17 69:20,25 70:5 72:22 73:4 74:13 97:7,20,22,25 98:18 99:3 99:5 100:3 101:4 103:24 146:19 147:5,13,18</p> <p><b>part</b> [69] 6:4 52:17 55:5 59:14 61:10 68:1 69:13 72:17 73:7,11,20 91:5 98:13 100:17 102:5 105:24 106:1 114:10,24 119:4 125:7 130:15 132:12 134:13 140:5,6,9 142:5 146:24 160:3,4 199:17 200:21 208:8 226:24 227:12,23 255:22 262:24 266:17 281:2,22 291:13 298:6,13 300:5 303:10 306:10,15 307:3 307:12 309:23 312:5 314:8,17 315:13 322:5 329:11 330:4 332:4 333:12,20 334:1 338:8 338:23 349:24 351:25 355:11 358:9</p> <p><b>participate</b> [1] 77:13</p> <p><b>participating</b> [1] 102:8</p> <p><b>particular</b> [40] 13:19,21 14:9 31:23 43:14 54:12 67:10,17 68:8 70:1 78:13 118:3 121:16 122:9 126:17 133:8 147:11 161:13 164:21 176:6,14 176:20,25 183:4 195:22 196:10 199:16 223:22 227:2 230:14 234:25 239:25 240:16 244:5 282:3,23 286:13 294:14 296:3 335:5</p> <p><b>particularly</b> [5] 67:14 80:18,21 175:17 254:12</p> <p><b>parts</b> [2] 268:3 306:5</p> <p><b>party</b> [1] 65:14</p> <p><b>PAs</b> [1] 214:15</p> <p><b>pass</b> [1] 303:5</p> <p><b>passed</b> [4] 9:11 139:17 251:11,22</p> <p><b>passing</b> [1] 56:4</p> <p><b>past</b> [9] 32:23 72:3 81:5 98:15 105:12,23 139:2 194:9 272:5</p> <p><b>pathologist</b> [8] 64:3 72:16 122:15 123:16 131:2 210:1 342:15,20</p> <p><b>pathologist's</b> [2] 342:21 343:7</p> <p><b>pathologists</b> [19] 30:8 123:1 131:1,3,23 133:16 133:21 135:12 199:2 200:25 230:2 232:18 257:17 282:13 286:10,12 287:7 342:22 343:12</p> <p><b>pathology</b> [6] 64:9 65:1 280:16 283:1 289:5</p>
---	---	--	---	--

<p>342:22 <b>paths</b> [2] 106:1,17 <b>patient</b> [30] 53:7 176:13 176:18,19,20,24,25 177:5 177:14,23,24 178:2 208:7 208:12,15,17,23 259:24 295:11,23 296:11,14 308:9,11,23 352:12,16 352:17 355:1 357:8 <b>patients</b> [74] 5:7,9,21 7:1 7:4 8:13 9:8 16:16,17 19:15 20:15 24:25 25:1 27:11 29:18 31:18 38:9 43:21 103:9 172:12,13 172:16,20 173:9 175:18 175:25 176:11,14,21 178:18 235:16 238:16,17 242:10 247:3,5,6 249:7 253:12 254:2 256:1,14 260:3,23 261:4,9,14 262:4 263:19 264:8 274:23 277:2,7 279:23 296:2,9,15 299:21 302:19 303:17 306:7 307:25 309:13 318:22 320:24 327:9 335:13 348:7,11 349:20 350:12 354:25 357:2,18 <b>patients'</b> [1] 352:13 <b>pay</b> [1] 133:20 <b>payments</b> [1] 135:12 <b>peaked</b> [1] 342:8 <b>peer</b> [10] 227:13,23 228:25 229:2 329:11 330:4,9 331:2 336:7 338:1 <b>Peninsula's</b> [1] 62:15 <b>Peninsulas</b> [1] 63:12 <b>people</b> [108] 4:19 6:8 9:2 14:20,21 15:1,4,8 22:7 27:24 59:19 71:19 74:23 75:4,6,12,16,18 77:25 88:8 94:20 99:9 105:17 105:17 107:14 109:24 156:2,6 157:11 169:5 172:2 175:3 176:10,17 176:23 177:23 178:1 179:6 180:10 182:20 185:14 186:14 191:12,14 192:15 193:1,8,9 212:1 216:15 217:14 233:4 240:14 242:21,21 251:2 254:11 255:25 259:22 260:14 263:9 273:20 275:3 276:12,16,21,24 279:21,25 287:19 288:24 296:20 297:10,14,15,17 297:19 298:10,18,19 299:24 301:9 303:1,5 304:12,16 305:11,14,25 307:7,8,10 310:20 311:16 311:21 313:15 315:1 321:2,18 322:9 324:22 326:21 332:10,23 338:14 347:23 349:6 352:7 <b>per</b> [2] 113:21 123:7 <b>percent</b> [11] 18:20 19:6 19:11,19,23 20:12 52:1 58:3 87:11 110:3 235:16</p>	<p><b>percentage</b> [2] 19:14 51:4 <b>percentages</b> [1] 20:19 <b>perform</b> [2] 201:24 229:20 <b>performance</b> [3] 80:1,4 214:14 <b>performed</b> [1] 237:9 <b>perhaps</b> [21] 12:16 14:8 25:4 27:17 29:21 35:15 37:8 49:22,25 60:17,18 61:21 74:20 127:15 151:25 152:2 205:10 285:2 303:19,21,22 <b>period</b> [53] 21:23 62:13 63:19 65:11,20 66:14 67:14,15 68:16 70:19 72:14 91:22,25 97:21 116:13 142:1 146:20 219:4 235:10 236:14,21 237:10 239:14 248:8 250:19,19 260:9 266:15 273:23 274:15 278:11 284:9 289:17 297:21 298:11 300:6 301:20 316:24,25 319:21 320:16 322:23 323:8 325:9 329:19 330:1 333:18 336:14 343:17 345:22 351:18 356:24,25 <b>periodically</b> [2] 109:9 300:8 <b>periods</b> [1] 350:2 <b>person</b> [9] 147:14 156:13 189:25 190:1 196:6 277:23 286:21 300:8,18 <b>personal</b> [6] 18:13 23:16 23:18 148:24 275:11 330:16 <b>personally</b> [3] 148:25 223:18 295:19 <b>personnel</b> [2] 200:24 213:4 <b>perspective</b> [7] 25:22 87:10 224:4 342:21 350:4 352:3,11 <b>perspectives</b> [2] 59:18 343:1 <b>Peter</b> [1] 1:10 <b>Pg</b> [1] 3:2 <b>Pgs</b> [4] 2:3,4,5,7 <b>phase</b> [1] 255:23 <b>phone</b> [4] 56:3 109:4 304:11 346:10 <b>phoning</b> [1] 302:9 <b>phrase</b> [8] 25:24 67:19 119:24 162:22 190:14 202:9 291:16 332:25 <b>phrasing</b> [1] 309:16 <b>physician</b> [11] 122:18 135:17 281:2,22,25 282:17 296:12 307:5 309:7 310:15 312:14 <b>physicians</b> [14] 135:20 175:15,23 177:23 254:12 306:8,8,9,9 307:6 308:22 312:3,9 355:8</p>	<p><b>physicians'</b> [1] 282:5 <b>PI</b> [1] 212:6 <b>picked</b> [1] 317:17 <b>picture</b> [5] 181:25 245:2 255:14 274:16 286:1 <b>piece</b> [43] 76:8,13 85:13 113:1,24 122:19 130:15 152:7 161:13 183:4,16 186:13 188:17 189:6 194:12 207:14 249:18 252:18 282:3 290:8 294:18,23 297:7 298:9 299:2 301:16 302:1 307:4 318:22 319:14 320:21,22 321:19 322:5 326:12 327:1,9 348:6 349:14,16 350:13,14 354:23 <b>pieces</b> [9] 84:14 114:14 114:19 227:8 290:3,4 320:13 335:7,8 <b>Pike</b> [1] 1:15 <b>Pipette</b> [1] 215:17 <b>place</b> [90] 16:6,22 17:1 113:13 128:23 167:23 179:3,4 180:16,17 182:8 183:14,14 184:23 185:10 185:12,19,22 186:6,10 187:25 189:23 197:9 198:22 200:19 201:2 209:4 227:4,8 231:17,22 232:16,20 248:17 249:18 252:15 255:17 259:17 262:5,7 268:1 269:4,11 276:19 279:17 280:5 286:7,14 287:3,16,17,20 289:1 291:9,15,17 293:25 295:10,22 303:23 304:13 305:22 306:20,21,25 307:19,22,23 308:2 309:12 310:2,16,22 312:24 314:4,10 315:3 317:11 323:23 327:7 329:19,22 330:1 336:1 338:7,17,19 344:5 349:24 357:13 <b>places</b> [1] 212:18 <b>plan</b> [4] 82:19,22,24 121:21 <b>plans</b> [1] 82:25 <b>play</b> [4] 67:1 147:15 262:24 335:4 <b>pleased</b> [3] 33:3,4,18 <b>pocket</b> [2] 135:19,20 <b>point</b> [76] 5:8 7:1 8:3 10:5 16:8 18:24 28:17 37:2,8 39:9 47:6 53:25 54:12 58:1 61:10 66:8 73:24 86:12 89:25 99:23 101:5,25 103:23 105:18 106:4,11 118:3 123:21 129:15 136:15,20 137:24 140:1 145:9,25 146:6 150:24 151:7 158:10 168:14 169:19 170:1 193:6,10 195:5,22 198:11 199:16 200:11 204:2 207:17 210:3 218:24 224:12 227:2 228:20 230:7 233:7 236:22</p>	<p>244:20 246:13 249:6 256:6 258:12 264:2 268:13 287:12 294:9 299:20 304:21 344:11 349:10 352:21 357:23 360:18,20 <b>pointed</b> [1] 266:25 <b>pointing</b> [1] 37:25 <b>points</b> [3] 25:18 193:25 208:25 <b>policies</b> [2] 216:17 335:1 <b>policy</b> [5] 76:24 77:14 85:11 310:2,8 <b>political</b> [1] 108:17 <b>politics</b> [2] 62:12 65:6 <b>pool</b> [1] 289:7 <b>pooled</b> [2] 287:8 289:5 <b>poor</b> [1] 295:15 <b>population</b> [4] 119:15 309:20 315:5 322:2 <b>portfolio</b> [1] 350:20 <b>posed</b> [3] 66:2 295:6 337:24 <b>position</b> [32] 59:20 63:5 64:8 65:2 70:11 91:2,15 91:21,23 92:7,20 95:18 96:1,16 97:3,15 122:21 136:18 182:21 189:19 190:19 192:10 198:6 204:24 261:13,18,20 264:4 268:24 278:2 343:3 351:24 <b>positions</b> [2] 59:19 106:13 <b>positive</b> [9] 47:23 48:1 208:2,7,16 215:22 216:6 216:11 238:7 <b>positives</b> [3] 237:3,17 237:20 <b>possession</b> [1] 74:6 <b>possible</b> [1] 21:22 <b>possibly</b> [5] 81:6 177:8 239:16 259:10 327:25 <b>potential</b> [2] 28:14 29:22 <b>potentially</b> [1] 181:22 <b>Power</b> [3] 96:13,15 97:3 <b>powers</b> [2] 84:21 86:5 <b>PR</b> [1] 98:6 <b>practice</b> [14] 81:4 84:4 134:18 143:6 144:4 151:20 154:2 184:14 186:6 195:11,13 341:5 342:23 343:11 <b>practices</b> [1] 185:23 <b>practise</b> [1] 208:9 <b>pre-dating</b> [1] 230:4 <b>precisely</b> [2] 228:6 248:4 <b>predate</b> [1] 211:3 <b>predated</b> [1] 31:4 <b>predecessor</b> [5] 106:22 106:24 139:13 167:2 269:17 <b>predecessors</b> [6] 118:14 138:11 139:7 141:17</p>	<p>204:22 297:14 <b>predominantly</b> [1] 62:19 <b>prefer</b> [1] 60:10 <b>preliminary</b> [2] 71:11 158:5 <b>Premier</b> [30] 11:22 12:13 65:15 75:8 93:8,23 94:5 94:16 95:1 322:17 345:11 346:1,20 347:1,18 353:1 353:6,8,12 354:6 355:23 356:6,10,13,16,25 358:5 358:11,25 359:7 <b>Premier's</b> [1] 93:12 <b>preoccupation</b> [1] 279:3 <b>preparation</b> [6] 14:1 115:21 116:2 201:12 246:8 278:7 <b>prepare</b> [1] 193:22 <b>prepared</b> [12] 8:25 9:2 105:9 122:20,20 144:8 193:25 273:11,15,15 285:20 294:22 <b>preparing</b> [2] 279:4 280:18 <b>prerogative</b> [2] 93:23 94:5 <b>Prescription</b> [2] 88:3 88:16 <b>presence</b> [1] 117:19 <b>present</b> [10] 7:12,14 77:12,13 162:9 163:14 164:4 168:3 251:18,24 <b>presentation</b> [8] 11:6 68:4,7,20,22,23 323:1 358:9 <b>presentations</b> [1] 358:9 <b>presented</b> [5] 13:25 14:7 238:19 240:12 268:16 <b>press</b> [2] 5:23 21:12 <b>pressure</b> [1] 124:6 <b>pressures</b> [3] 129:19,20 129:21 <b>presumably</b> [2] 206:7 211:25 <b>presume</b> [1] 40:22 <b>pretty</b> [2] 130:4 278:8 <b>previous</b> [10] 32:8 35:9 80:3 85:22 86:16 104:23 142:19 143:20 232:13 320:5 <b>primarily</b> [2] 67:13 255:25 <b>primary</b> [2] 193:20 247:17 <b>priorities</b> [1] 121:18 <b>prioritizing</b> [1] 128:15 <b>priority</b> [1] 172:11 <b>Pritchard</b> [30] 2:4 13:5 13:6,7,11 14:4,15 15:6 15:23 16:4 17:5,21 18:5 18:16 19:20 20:2,21 21:9 21:16 22:2,11,17,25 24:3 24:12 25:6,21 58:2,4</p>
--	---	--	---	---

<p>60:17 <b>Pritchard/Jenny</b> [1] 1:9 <b>private</b> [1] 93:18 <b>privy</b> [1] 103:16 <b>problem</b> [20] 16:18 27:8 27:10 28:11 29:10 64:19 186:3 288:6,7 332:1 333:24 334:2,8 335:3 338:11 339:3,13,22 340:3 343:23 <b>problems</b> [9] 292:21 332:12 334:12 336:8 339:3,19 340:7,12 350:6 <b>procedure</b> [5] 175:16 180:11 213:6,13 327:8 <b>procedures</b> [3] 213:13 214:5 215:1 <b>proceed</b> [5] 32:7 35:7 60:8,15 355:10 <b>proceeded</b> [2] 84:6,9 <b>proceeding</b> [2] 268:11 268:19 <b>proceedings</b> [11] 172:1 188:10 189:16,20 190:5 190:15 191:9 192:16,22 197:2 198:7 <b>process</b> [76] 27:3,5 52:17 59:15 77:1,16 99:18 106:17 113:6,8,17 114:1 114:5 119:5 120:9,10,22 122:9,16 123:7,18 124:20 125:24 126:13 127:20,22 130:2,24 131:2,8 132:17 133:18 134:2 141:24 142:16 144:16 180:9 188:12 189:17 190:17 198:9 199:17 226:15 227:13,24 229:1,2 231:20 254:25 255:2 262:4 281:1 282:14,18,22 284:10 296:16 298:7 301:23 306:6 308:21,25 309:5 309:19 312:8 314:4 317:11 326:13 329:12 330:5,10 331:22 333:12 333:20 342:4 353:11 <b>processes</b> [5] 194:11 312:2 326:24 334:25 335:10 <b>processing</b> [1] 208:14 <b>producing</b> [1] 293:6 <b>professional</b> [3] 61:23 62:21 103:2 <b>professionally</b> [1] 106:17 <b>proficiency</b> [1] 200:10 <b>proficient</b> [1] 234:14 <b>profiles</b> [1] 105:3 <b>program</b> [43] 63:9 75:14 80:4,23 87:11 88:4,16 88:17 110:4 111:4 114:17 198:25 199:15,25 200:22 232:17 286:5,13,14,16 289:2,15,20,22 290:2 291:11 293:1,10 306:6 306:12,17,19,24 307:13 308:7 309:23 312:2,25</p>	<p>313:14 314:14,21 326:6 326:9 <b>programming</b> [2] 75:16 87:10 <b>programs</b> [18] 62:23 63:3,10,17 76:22 80:9 80:17 81:1 88:7 105:5 109:24 110:6 121:18 123:25 124:12,12 183:15 341:3 <b>progress</b> [12] 33:3,4 209:21 213:18,22 214:3 215:6,21 216:16,21 217:14 304:7 <b>progress-draft</b> [1] 215:24 <b>projects</b> [1] 106:2 <b>prominence</b> [3] 230:16 231:19 233:25 <b>prompt</b> [3] 163:13 223:13 340:18 <b>prompted</b> [7] 152:12,13 160:2 223:1 228:7,8 344:17 <b>proper</b> [2] 16:17,21 <b>properly</b> [1] 307:21 <b>proportion</b> [1] 87:6 <b>pros</b> [1] 267:5 <b>protocol</b> [3] 215:22 307:23 309:12 <b>protocols</b> [10] 288:25 306:13,14 307:15 308:15 308:16 310:13 312:6 334:25 343:5 <b>protracted</b> [1] 192:17 <b>provide</b> [27] 24:21 75:15 76:21,23,24 77:2,3,24 77:24 79:11,23 86:7 109:9 119:14 194:4,6 198:23 212:23 216:24 289:11 294:23 304:10 308:7 312:4,6,8 357:10 <b>provided</b> [32] 13:15 24:23 71:18 72:23 73:4 73:10,11,14,16 74:2,12 87:22 88:9 142:17,25 170:7 190:8 222:5 231:1 240:23 241:22 244:13 245:20 253:21 288:11,17 297:7 302:16 311:24 313:6 318:5 356:2 <b>provides</b> [2] 76:19 87:17 <b>providing</b> [16] 10:7 68:21 69:12 254:15 256:2 257:18 263:13 266:16 267:17 286:12 307:11 308:8,21 310:14 312:3 326:20 <b>province</b> [29] 33:16 65:23 67:24 74:24 75:4 75:6,12,18,20 77:20 78:6 109:25 119:15 121:23 171:24 191:12 193:2 216:18 231:18 250:25 287:8 288:8,11 289:10 295:18 305:12 309:21 311:17 313:18 <b>provincial</b> [4] 62:11</p>	<p>75:7 87:6 88:1 <b>provision</b> [1] 88:13 <b>public</b> [47] 16:19 17:2 21:21 78:24 79:24 86:18 93:10,17 99:11,15,24 102:14 117:10 139:4,5 154:22 162:15,16,24 163:3 164:11,12 165:22 189:10 241:19 244:12,13 254:23 256:20,24 266:18 269:7,13 277:21 288:18 300:7 302:25 304:17 313:14 314:6,14,21 315:8 315:9 327:1,4 354:8 <b>publication</b> [1] 102:19 <b>publicly</b> [5] 137:12 263:5 269:15 279:9 304:11 <b>pull</b> [2] 156:6 293:2 <b>pulled</b> [1] 236:23 <b>pulling</b> [1] 236:9 <b>purely</b> [1] 215:15 <b>purchase</b> [4] 116:16,17 183:5 234:10 <b>purpose</b> [3] 79:21 234:19 244:14 <b>purposes</b> [2] 216:24 238:1 <b>pursuant</b> [1] 78:24 <b>pursue</b> [5] 54:8 82:3 127:25 224:6 246:24 <b>pursued</b> [2] 70:3 315:25 <b>pursuing</b> [2] 228:9 247:13 <b>put</b> [41] 18:24 26:3 30:12 37:8 131:4 132:12 143:1 178:6 179:3,4,6 180:16 185:12,19,22 186:6 197:1 198:22 200:18 210:14 227:8 230:25 232:16,20 267:23 286:6 287:2 291:9 295:10,13,21 300:24 301:8 307:18,22 308:2 309:12 317:11 336:4,22 338:25 <b>putting</b> [6] 16:9,22 17:1 183:13,14 303:22</p> <hr/> <p style="text-align: center;"><b>-Q-</b></p> <p><b>Q.C</b> [319] 1:6,7 2:5 25:13 25:15,16 26:2,18 27:12 28:7 29:19,25 30:13,20 31:2,7,21 32:17,22 33:7 33:14,22 34:2,7,12,18 34:23 35:17,22 36:1,11 36:19,25 37:7,15,21 38:5 38:12,21 39:13,22 40:2 40:7,12,19,23 41:2,8,13 41:17,23 42:7,11,17,24 43:5,11,18 44:1,5,15,21 45:4,9,13,18,24 46:4,12 46:18 47:5,11,16,20 48:4 48:9,15,24 49:10,20 50:4 50:11,18 51:3,12,24 52:7 53:1,10,15,24 54:19 55:11,18,24 56:10,20,24 57:10,14,19,25 58:9,16 58:21 59:8 132:2,7,11 134:6,11,19,24 136:10</p>	<p>136:24 137:20 138:7,15 139:20,25 140:10,14,19 141:1,14 142:11,21 143:8 143:15,21,25 144:22 145:4,12,23 146:3,16,25 147:24 148:4,10,17,21 149:3,10,21 150:20 151:2 151:15,23 152:16,23 153:3,10,15,19 154:13 154:19 155:3,7,13 156:12 157:3,8,20 158:18 159:4 159:10,15 160:5,9,21 161:3,14,19 162:4 163:4 163:8,15 164:15 165:13 165:17 166:1,12,17,25 167:6,10,14,22 168:2,9 168:18,22 169:8,13,23 170:5,14,19,25 171:4,13 171:18 172:23 173:3,12 173:18 174:2,8,15,22 175:5,22 176:3,9,22 177:4,10,17,22 178:3,12 178:22 179:15 181:7,16 217:3,5,7,9 218:1,9,15 218:19,23 219:16,23 220:5,10,25 221:5,11,16 221:20,24 222:3,16 223:3 223:8 224:9,18,23 225:4 225:19 226:5,10,19 227:14,18,22 228:13,23 229:7,17 230:21 231:5,9 232:1 319:17,23 320:9 321:6,23 323:5,18 324:1 324:6,14,25 325:6,17,21 326:15 327:12,20 328:1 328:7,13,18,23 329:3,14 330:6,18,23 331:4,9,17 332:17 333:8,15,22 334:4 334:19 335:17 336:3,18 337:1,6,10,21 338:24 339:12,20 340:1,20 341:20,25 <b>QM</b> [1] 216:22 <b>QMPLS</b> [1] 293:23 <b>qualification</b> [2] 204:12 303:20 <b>qualified</b> [1] 52:24 <b>quality</b> [1] 204:9 <b>quality</b> [70] 34:19 55:2 56:13 65:22 72:20 75:14 75:16 123:24 124:13 179:1 180:15 181:17 183:7,14 184:9 185:12 186:10 198:24 199:14,25 200:21 206:1 207:14 213:24 216:10,17,23,23 227:4 230:13 231:3,22 231:24 232:17,25 233:2 286:14 287:5,21 289:1 289:14,20,22 290:2 291:11 292:25 293:10 294:23 295:8,20 305:21 306:3,5,11,16,18,24 307:13 308:6 309:23 310:22 312:1,1,7,25 326:5,8 334:17 341:2 352:17 <b>quarter</b> [1] 272:4 <b>queries</b> [1] 300:10 <b>query</b> [1] 266:10</p>	<p><b>questioned</b> [4] 30:10,18 116:20 252:18 <b>questioning</b> [2] 187:25 254:19 <b>questions</b> [44] 4:13 9:6 12:23 23:2,10 24:13 25:8 25:19 28:2 32:1 36:12 59:10 78:11 138:2 160:1 172:3,4 182:12 194:5,23 197:1 199:3,6 203:13 223:14 247:9 253:16 257:6 277:22 284:3,11 285:7 288:4 293:15 311:22 315:9 317:4 319:8 325:5 331:19 341:15 342:8 347:18 353:6 <b>quickly</b> [5] 21:22 107:13 137:18 180:21 349:17 <b>quiet</b> [1] 138:8 <b>quite</b> [12] 11:19 30:23 72:7 103:23 177:8 192:17 289:21 301:25 327:25 348:1 351:18,22</p> <hr/> <p style="text-align: center;"><b>-R-</b></p> <p><b>r</b> [2] 208:21,21 <b>rabbit</b> [1] 212:6 <b>radar</b> [1] 119:24 <b>radio</b> [2] 117:11 137:7 <b>raise</b> [2] 191:13,19 <b>raised</b> [12] 196:13 203:13 224:10 225:10 226:11 243:12 266:24 269:5,8 286:2,18 319:8 <b>raising</b> [1] 191:22 <b>range</b> [3] 77:2 88:25 186:7 <b>rate</b> [8] 18:22 19:3 58:3 58:10,12,18,22 59:7 <b>rather</b> [11] 58:12 102:19 266:13 271:17,22 274:23 296:17 319:4 323:22 339:16 340:12 <b>rationale</b> [7] 94:15 190:8 266:7,11,21 267:1 268:8 <b>re</b> [2] 62:8 238:8 <b>re-elected</b> [2] 62:3 65:17 <b>re-examination</b> [3] 2:5 25:15 290:5 <b>re-testing</b> [1] 357:13 <b>reach</b> [1] 324:23 <b>reached</b> [5] 7:21 8:3 205:15 319:3 324:23 <b>reaction</b> [2] 139:9 163:13 <b>read</b> [24] 5:2 10:4,6 14:2 115:10,14 116:16 132:22 139:19 175:11 177:11 195:25 217:11 241:12 285:24 287:24 341:18,21 342:1,9,12,17,19,20 <b>reader</b> [1] 146:12 <b>reading</b> [9] 35:4,12 172:17 190:23 230:23 232:7 234:4 240:12,15</p>
---	---	--	--	---

Inquiry on Hormone Receptor Testing

<p><b>ready</b> [2] 60:8,19  <b>real</b> [2] 268:15 270:7  <b>realistically</b> [1] 121:15  <b>realization</b> [1] 166:2  <b>realize</b> [2] 103:22 230:2  <b>realized</b> [7] 28:11 37:4  54:12 71:4,5,7 275:1  <b>really</b> [17] 27:22 28:18  36:6 52:23 83:13 85:4  180:25 181:12 228:9  238:23 243:15 287:3  295:18 301:7 317:23  349:8 351:24  <b>reappointed</b> [1] 62:9  <b>reason</b> [11] 9:22,23 15:22  16:12 17:4,19 164:13  222:4 240:4 324:17  342:14  <b>reasonable</b> [1] 84:3  <b>reasons</b> [6] 11:2 16:16  24:24 29:17 30:6 243:5  <b>reassessment</b> [2] 206:1  206:15  <b>reassurance</b> [3] 288:25  303:15 321:1  <b>reassurances</b> [2] 302:18  304:21  <b>reassured</b> [2] 260:6  287:20  <b>reassuring</b> [2] 303:12  338:18  <b>recalling</b> [1] 146:14  <b>receive</b> [14] 16:17 22:20  43:10 88:9 103:22 104:4  104:6 109:4,25 136:13  139:21 199:2 295:16  296:21  <b>received</b> [29] 5:12,13,16  13:18 23:25 34:11 38:2  38:23 39:6,17,20 40:8  41:16 43:4,22 46:10  79:16 82:8 112:14 170:9  194:21 214:21 223:9  247:5 271:9 290:11  300:14,17 303:3  <b>receiving</b> [4] 12:9 112:3  200:25 304:23  <b>recent</b> [8] 98:14 150:23  158:10 194:8 222:5  285:22 297:6 298:13  <b>recently</b> [4] 76:6 83:5  286:8 294:7  <b>receptor</b> [3] 1:2 288:14  362:4  <b>RECESS</b> [2] 90:5 280:9  <b>recognize</b> [6] 128:5  133:8,22,23 147:3 276:4  <b>recognized</b> [7] 117:19  129:1 134:8 135:25 139:7  282:23 284:13  <b>recognizing</b> [3] 158:12  193:7 245:9  <b>recollect</b> [3] 20:5,9,10  <b>recollection</b> [5] 130:12  130:14 219:3 319:11  330:2</p>	<p><b>recollections</b> [1] 59:17  <b>recommendation</b> [16]  204:1 212:2,5,17,19,22  213:2,16 214:7 215:3  216:2 217:13 218:22  223:21 339:22 340:19  <b>recommendations</b> [84]  32:9,12,13,21,25 33:10  34:15,25 35:10 36:10  38:8 60:4,5 179:12  184:17,19 186:16 201:16  201:22 202:6,9,11,12  203:4,9 205:1 207:10,13  207:16 209:6,19,20,23  210:1,5,16 211:2,20,22  213:19 215:19 216:25  217:21 218:5,11 219:12  219:14 220:17 222:10,12  222:18,20,23 223:1,5,11  223:18 224:5,8,13 225:12  226:21 227:9 229:13  233:9 291:20 292:17,18  326:4 332:5,8,10 336:17  339:9,16,21 340:9,11,14  340:16,17,23 341:2,6  <b>recommended</b> [7]  211:22 212:12 214:2  215:12 216:7,13,19  <b>reconcile</b> [2] 298:7 301:7  <b>reconciliation</b> [1]  301:23  <b>reconciling</b> [1] 297:9  <b>record</b> [3] 162:16 269:13  298:20  <b>records</b> [2] 137:10  322:13  <b>recruit</b> [1] 92:11  <b>recruited</b> [1] 89:19  <b>redesign</b> [1] 212:23  <b>redone</b> [2] 260:18 271:22  <b>refer</b> [5] 61:13 151:6  231:3 232:17 288:21  <b>reference</b> [20] 25:21  38:6 49:2 54:24 56:3  68:5 72:3 85:14 147:4  150:24 158:10 187:3  231:20 265:20 291:13  325:7 326:2,3 336:21  360:20  <b>referenced</b> [3] 227:7  291:10 300:25  <b>references</b> [4] 180:4,10  325:25 326:6  <b>referred</b> [8] 57:15 67:21  78:15 205:12 206:1  226:25 262:19 291:3  <b>referring</b> [8] 61:7,13  196:10 231:16 232:12  306:8,22 307:12  <b>refers</b> [3] 235:9,13 247:3  <b>reflect</b> [6] 28:13 183:25  185:23 204:18 341:5  360:17  <b>reflected</b> [5] 184:12  186:7 277:19 278:23  305:5  <b>reflecting</b> [1] 278:13</p>	<p><b>reflection</b> [5] 12:16  275:15,16 297:2 352:7  <b>Refresh</b> [1] 170:12  <b>refrigerations</b> [1]  214:18  <b>regard</b> [2] 295:8,20  <b>regarding</b> [10] 6:2 20:25  21:3 65:21 122:14 138:3  229:12 242:9 280:15  296:23  <b>regardless</b> [4] 120:2  161:24 197:1 247:14  <b>regards</b> [1] 23:23  <b>regional</b> [6] 1:11,18 83:5  84:11,23 88:10  <b>regions</b> [2] 76:23 216:18  <b>registered</b> [1] 208:1  <b>Registrar</b> [3] 4:15 54:20  169:17  <b>regrettably</b> [1] 10:5  <b>regular</b> [3] 68:15 213:4  288:16  <b>regularly</b> [1] 68:12  <b>rehashing</b> [2] 318:20,21  <b>reinstigate</b> [1] 212:11  <b>reinstigated</b> [1] 215:9  <b>reinvestigation</b> [1] 29:4  <b>reiterate</b> [1] 268:5  <b>related</b> [9] 13:13 21:1  63:2 94:24 113:2 124:5  124:19 350:22 352:16  <b>relating</b> [1] 112:3  <b>relation</b> [3] 36:16 54:3  235:22  <b>relations</b> [2] 177:6,15  <b>relationship</b> [13] 66:25  76:16 78:14 80:15 84:13  107:9 108:12 109:14,16  109:18 110:21 111:1,3  <b>relative</b> [8] 75:6,20,21  75:23 102:19 122:12  126:6 143:20  <b>relatively</b> [2] 128:2  246:7  <b>relay</b> [2] 313:21,24  <b>relaying</b> [1] 182:7  <b>release</b> [5] 6:1,7 10:5  189:6 285:20  <b>released</b> [26] 5:23 6:17  6:19,22 7:5,8,18 8:13,17  10:1,4,12,16 11:13 12:6  12:7 21:21 158:25,25  160:25 171:21 188:17,19  189:9 264:18 304:11  <b>releasing</b> [1] 6:13  <b>relevance</b> [1] 195:15  <b>reliance</b> [1] 178:6  <b>relied</b> [3] 22:3,12 185:9  <b>rely</b> [2] 107:22 112:4  <b>relying</b> [2] 245:15,16  <b>remained</b> [6] 66:13,16  91:12,21,25 92:7  <b>remaining</b> [4] 32:8 35:8  39:11 247:7</p>	<p><b>remember</b> [8] 33:4 68:6  71:16 108:20 160:12  165:10 168:13 187:8  <b>removed</b> [1] 129:3  <b>remuneration</b> [3]  122:15,18 123:17  <b>reopen</b> [2] 187:4 294:22  <b>reopened</b> [1] 286:8  <b>reopening</b> [4] 186:12,17  186:22 187:18  <b>repeals</b> [1] 84:12  <b>repeat</b> [4] 227:5 269:14  289:17 291:1  <b>repeated</b> [3] 299:6,10  299:12  <b>repeatedly</b> [1] 331:20  <b>repeating</b> [8] 234:4  299:18 302:21,23 303:15  304:4,16,19  <b>replace</b> [1] 143:2  <b>replaced</b> [4] 143:5,6  171:14 288:15  <b>replacing</b> [1] 183:9  <b>report</b> [36] 35:6 63:21  80:14 114:17 119:9  122:20 150:11 202:15  206:9,12,18,20 207:11  209:2,10,12,13,14,16  212:25 222:11 226:24  292:25 293:5,14,23 294:2  312:13 332:6,14,16,23  333:2 340:12 342:15,16  <b>reported</b> [4] 15:15 25:23  26:4 158:24  <b>reporting</b> [13] 17:9  63:11 72:12 230:1 240:7  271:16 290:6 292:21  306:7,7,7,21 307:4  <b>reports</b> [41] 79:11,16,21  80:8 82:8,10 119:5  185:17 202:14,15 207:19  219:10,15 222:25 228:2  229:4 304:18,24 306:15  307:6 308:7,17 309:6  312:3,8 327:15,18 328:20  329:6,10 332:24 336:7  339:2,6,18 341:18 342:2  342:9,17,19 343:10  <b>represent</b> [3] 67:4,5  350:19  <b>representatives</b> [2]  4:18 258:5  <b>represents</b> [1] 235:15  <b>reputation</b> [2] 108:16  108:20  <b>request</b> [12] 5:17 6:18  9:12 24:5 44:14,18 82:4  206:14 247:7,8 281:6  345:25  <b>requested</b> [4] 44:10,12  109:10 332:18  <b>requests</b> [1] 124:16  <b>require</b> [3] 48:21 144:18  288:12  <b>required</b> [16] 33:17  36:14 52:13,17 54:3</p>	<p>82:18 120:6 127:13  141:11,20 142:3,6 208:20  214:18 252:14 335:2  <b>requirements</b> [3] 121:2  121:9 287:5  <b>requires</b> [3] 48:17 49:1  133:14  <b>requiring</b> [1] 238:17  <b>requisitioned</b> [1] 310:15  <b>reservation</b> [1] 284:22  <b>resolution</b> [1] 267:15  <b>resolved</b> [2] 141:16,19  <b>resource</b> [2] 201:11  252:18  <b>resources</b> [10] 7:24  63:13 179:8,9,9 252:13  252:23 287:8 289:8  291:12  <b>respect</b> [27] 5:20 8:6,25  66:2 77:11 80:1,16 81:1  85:24 199:7 276:24 284:4  286:2,3 291:2,14 293:23  310:8 314:2 316:14  332:13 338:18 339:18  342:13 353:24 354:22  356:17  <b>respective</b> [1] 76:23  <b>respects</b> [3] 113:3 114:11  353:20  <b>respond</b> [3] 85:20 133:11  284:11  <b>responded</b> [1] 284:5  <b>responding</b> [1] 25:19  <b>responds</b> [1] 310:5  <b>response</b> [23] 119:12  155:14 162:17 183:8,10  183:11 189:7 231:14  248:11 254:18 266:10,25  267:12,17 288:19,22  291:13 295:24 307:3  308:5,21 352:23 359:2  <b>responses</b> [4] 198:20  285:8 339:8,10  <b>responsibilities</b> [6]  63:10 74:21 75:3 77:6  85:15 98:6  <b>responsibility</b> [4] 75:9  75:12 76:15 113:15  <b>responsible</b> [1] 149:19  <b>rest</b> [1] 7:13  <b>restarted</b> [1] 71:6  <b>restore</b> [1] 314:3  <b>restored</b> [2] 17:3 288:18  <b>restraint</b> [1] 272:19  <b>result</b> [21] 45:6,10 46:22  50:25 51:1,19 80:13  93:12 123:6,8 128:10  129:8 132:23 186:5 228:3  270:19 275:15 282:12  298:9 299:2 350:14  <b>results</b> [73] 7:2,3,4 8:7,8  28:12 38:1,7,23 39:11  43:22,23 44:10,12 45:21  46:6,19,21 47:1,8,12  48:17,20 49:1,5,6,11,11  49:12,19 51:13,15,16,18</p>
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Inquiry on Hormone Receptor Testing

<p>52:3,4,6,19 53:4,6 54:2 71:25 200:4 231:2 234:15 236:3 238:7 242:11 247:5 260:5 274:24 277:8 285:21,23 288:12,16 290:5,11 293:6 295:25 296:1,8,21 297:20 298:24 301:20 303:25 307:10 308:20,22 310:14 347:25 349:21 <b>resume</b> [8] 172:5 173:22 174:19 188:3 202:5,24 204:9 209:8 <b>resumed</b> [9] 173:5,15 174:12 184:2,5 202:19 203:7 209:24 210:4 <b>RESUMES</b> [1] 2:2 <b>resuming</b> [3] 173:25 184:8 186:2 <b>retained</b> [1] 216:12 <b>retest</b> [10] 9:4,5,10 45:5 237:7,15 247:18 261:16 277:8 298:12 <b>retested</b> [27] 7:1 9:18 26:17 27:6 36:21 38:25 39:2,2 40:8 42:3,13 43:22 44:18 45:20 236:11 236:18 238:16 247:5,6,8 248:16 249:7 251:6 276:22 297:22 301:21 321:4 <b>retesting</b> [22] 15:21 37:23 44:22 202:18 235:15,17,18 236:2 237:18,20 238:9,12 247:14 253:13 254:2 261:9 262:4 294:23 296:15 306:2 309:20 310:21 <b>return</b> [2] 35:2 74:5 <b>returned</b> [3] 54:14 74:7 206:10 <b>revealed</b> [1] 137:10 <b>reverse</b> [1] 61:25 <b>review</b> [40] 34:19 38:7 44:16 45:12 51:16 53:2 54:25 55:3,13 56:5,13 114:16 119:6,7 171:22 172:14,20 200:3 206:2 227:13,23 228:25 229:2 235:10 236:7,9 237:3,7 237:17 286:4 291:14,16 291:17 292:13 329:12 330:5,10 331:2 336:7 338:8 <b>reviewed</b> [23] 5:14,16 7:3 9:19 44:13 46:11,25 47:2,8 49:17 54:7,9,15 140:21 236:5,14,15,20 237:11,14,22,25 292:15 <b>reviewer</b> [1] 204:16 <b>reviewers</b> [8] 202:3,22 203:11 204:5 205:21 213:3 331:14 343:24 <b>reviewing</b> [4] 8:7 54:10 208:11 212:2 <b>reviews</b> [24] 6:3 184:16 184:18 186:15 187:1</p>	<p>201:17,22 203:4,7 229:1 229:14 328:24 329:6,19 329:22 330:4 331:5,24 336:7 337:2,11,15 338:1 339:2 <b>revisited</b> [1] 129:4 <b>revisiting</b> [1] 264:1 <b>right</b> [66] 1:9 5:4 15:19 15:24 16:15,16 18:10,21 29:13,16,16,17 30:5,6 30:18,19 31:13,14,19 41:7 44:20 45:23 60:17 98:3 100:1,13 102:22 108:5 111:13 117:5,24 120:13 125:19 138:12 148:22 153:4 157:10 158:19 159:5 177:5 192:9 197:13 201:25 204:4 211:19 225:20 239:22 240:4 242:11 255:11 257:22 259:3 261:22 262:12 267:16 269:3 280:8 281:18 283:4 292:9 331:10 339:25 349:17 350:7,8 361:6 <b>rigorous</b> [1] 289:14 <b>road</b> [1] 29:2 <b>Robert</b> [4] 32:3 91:6 92:3 301:14 <b>role</b> [27] 65:15 66:17,23 67:1,3,12 69:20,22 72:11 74:19,21 77:6 90:11 97:18 98:17 106:6 108:22 109:12,19 110:12 112:20 147:9,15 189:21 191:10 330:17 357:7 <b>roles</b> [4] 75:3 76:14 78:13 98:19 <b>Rolf</b> [3] 1:9 2:4 13:6 <b>room</b> [9] 25:20 98:15 168:4 192:15,16 196:4 251:24 260:2 261:4 <b>root</b> [3] 183:15 185:2 343:22 <b>Ross</b> [3] 2:6 61:1 351:14 <b>route</b> [1] 29:4 <b>RTs</b> [1] 216:10 <b>ruled</b> [1] 322:18 <b>run</b> [2] 105:25 232:14 <b>running</b> [1] 342:25</p>	<p><b>sat</b> [6] 116:14 143:9 156:11 160:20 165:6 352:19 <b>satisfactory</b> [1] 350:9 <b>satisfied</b> [2] 210:2 325:20 <b>satisfy</b> [2] 232:9 350:9 <b>sausage</b> [1] 216:5 <b>saw</b> [3] 102:7 117:18 139:10 <b>says</b> [17] 9:4 18:22 34:15 47:12 48:17,20 85:17,19 201:21 214:20 236:4,13 253:11 261:7 288:4 295:7 295:20 <b>scale</b> [1] 65:25 <b>scan</b> [1] 143:10 <b>scanned</b> [1] 136:17 <b>scanning</b> [2] 117:17 118:5 <b>scene</b> [3] 114:4 128:24 129:16 <b>scheduled</b> [1] 213:5 <b>SCM</b> [1] 214:21 <b>scope</b> [1] 208:8 <b>scratched</b> [1] 18:20 <b>screen</b> [8] 5:2 61:8 119:24 172:4,7 217:11 219:22 220:2 <b>screening</b> [1] 172:6 <b>scroll</b> [3] 61:9 170:15 172:9 <b>scrums</b> [1] 316:25 <b>se</b> [2] 113:22 123:7 <b>seamless</b> [1] 87:18 <b>search</b> [1] 137:10 <b>seated</b> [3] 4:2 90:7 280:11 <b>second</b> [14] 34:24 37:16 37:22 75:20 87:9 201:8 209:2 235:9 278:5 332:4 335:8 348:6 349:16 356:4 <b>secondly</b> [1] 74:25 <b>Secretariat</b> [2] 23:15 24:7 <b>Secretaries</b> [1] 98:18 <b>secretary</b> [27] 62:5 66:6 66:14,17,21,24 67:20 68:17 69:20,25 70:6 72:22 73:5 74:14 97:7 97:20,23 98:1 99:3,6 100:3 101:4 103:24 146:19 147:5,13,18 <b>section</b> [3] 59:3 202:17 213:1 <b>sector</b> [3] 63:1 93:18 101:19 <b>sectors</b> [1] 63:2 <b>secure</b> [2] 77:1,15 <b>secured</b> [1] 282:20 <b>see</b> [34] 7:23 17:25 22:20 38:2 45:5 54:21 61:6 80:25 131:13 146:7 183:11 184:13 207:8</p>	<p>209:4,7 210:15,21 211:5 211:19 213:19 218:10 220:11,18,22 226:20 241:13 249:1,17 267:1 273:3 285:6 295:5 311:10 312:23 <b>seeing</b> [5] 222:17,19 235:22 252:4 358:11 <b>seek</b> [2] 77:14,15 <b>seeking</b> [3] 126:11 198:25 265:10 <b>seem</b> [2] 175:3 266:19 <b>seized</b> [3] 117:4 349:9 352:4 <b>self</b> [3] 15:15 25:23 26:4 <b>self-reported</b> [1] 29:11 <b>send</b> [9] 15:19 26:16 30:11 43:9 50:24,25 51:10,13,15 <b>sending</b> [3] 70:22 290:4 298:24 <b>senior</b> [3] 77:22 93:14 94:20 <b>seniors</b> [1] 67:13 <b>sense</b> [16] 15:7 27:5 40:20 42:1 123:18 130:8 151:25 166:8,21 182:18 185:6 243:23 266:20 268:21 326:19 341:9 <b>sensitive</b> [1] 326:20 <b>sent</b> [33] 5:11,13,16 15:16 31:24 39:6,8,17,20 40:6 40:8,9 41:10,14 42:21 43:4 46:10 47:1 50:12 50:17,22 51:8 54:14,14 72:2 195:5,23 199:19 219:13 220:6 222:14 235:14 238:12 <b>sentence</b> [4] 32:4 34:24 34:25 196:11 <b>separate</b> [4] 14:6 76:2 78:16 268:12 <b>separating</b> [1] 237:6 <b>September</b> [4] 54:24 92:13 214:11 215:7 <b>sequence</b> [5] 158:1 239:2 298:4 323:16 346:23 <b>series</b> [7] 13:14 62:22 184:17 186:15 291:20 292:16 339:9 <b>serious</b> [2] 64:19 288:9 <b>service</b> [15] 62:18,24 64:3 75:15 86:8 93:10 93:17 124:7 132:24 210:17 212:11 220:18 286:5,6 292:14 <b>services</b> [73] 14:19,21 17:7 23:14 62:6,8,10 63:2,10,16,21 64:9,25 65:1,16,22,22 66:2,7 70:12 72:17 74:20 75:10 76:3,22 77:2,7,12,20 80:18 81:2 86:6 87:13 87:15,15,16,18,20,22 88:1,2,7,14 95:14,22 102:6 105:5 106:15 108:8 109:20,21,24 110:2,7,7</p>	<p>114:13,16,21 119:2,8,15 120:24 121:13 125:10 149:19 171:6 185:21 232:21 265:7 268:8 277:24 286:22 293:1 <b>session</b> [1] 74:3 <b>set</b> [2] 21:3 60:25 <b>settled</b> [1] 131:25 <b>several</b> [11] 13:23 24:14 106:12,18 128:16 163:2 219:7 250:24 299:19 341:18 342:9 <b>shadowing</b> [1] 69:3 <b>shake</b> [1] 31:16 <b>shall</b> [3] 85:18,19,20 <b>share</b> [5] 266:12 284:25 292:11 329:8 354:15 <b>shared</b> [35] 71:10,17 72:4 112:24 158:16 159:1 159:1 161:11 162:21,23 165:23 182:15 187:8,13 216:17 227:11,21 238:25 239:3 254:22 257:12 261:2 263:18 264:21,23 264:24 266:8 270:11 271:14 292:2 299:7,14 319:9 352:11 357:25 <b>sharing</b> [6] 190:4 194:2 291:5 303:16 332:23,24 <b>shed</b> [1] 337:2 <b>sheet</b> [2] 6:17,21 <b>shocking</b> [1] 285:17 <b>shopping</b> [1] 121:11 <b>short</b> [11] 132:21 156:9 266:14 273:17,23 274:5 274:15 284:9 322:23 323:8 325:9 <b>show</b> [2] 60:18 144:7 <b>showed</b> [2] 57:15 348:1 <b>showing</b> [1] 336:12 <b>shown</b> [1] 230:3 <b>side</b> [4] 232:14,14 259:11 342:24 <b>sides</b> [1] 7:25 <b>sign</b> [1] 194:14 <b>signed</b> [2] 208:6 216:12 <b>significance</b> [4] 194:10 275:3 348:6 349:3 <b>significant</b> [6] 64:18 85:24 119:1 147:16 275:24 349:4 <b>signing</b> [2] 144:18 194:12 <b>similar</b> [7] 178:25 220:15 254:17 293:4 350:25 351:1 353:20 <b>Simmons</b> [6] 1:11 23:10 31:25 35:19 57:15,16 <b>simply</b> [5] 19:10 54:7 312:11,12 335:3 <b>Sinai</b> [22] 5:12 9:18 15:16 15:20 38:2,23 39:8 46:10 46:19 47:1 49:11 50:17 50:22,23,23 51:17,20 52:3,20 53:5 70:22</p>
<p><b>-S-</b></p>				
<p><b>safe</b> [1] 188:2 <b>safety</b> [1] 352:17 <b>salaried</b> [1] 135:19 <b>salaries</b> [3] 133:17,21 282:6 <b>sample</b> [5] 27:6 45:5 47:4 51:2 208:16 <b>samples</b> [22] 15:16,20 26:16 27:7 36:16,21 38:25 39:8,12,24 40:4 50:7,17,24 51:8,10 54:1 54:13 70:22 199:18 200:2 208:18 <b>Sandra</b> [3] 1:7 2:7 61:1</p>				

<p>235:14  <b>sit</b> [4] 155:23 293:11  341:16 342:11  <b>sitting</b> [4] 56:1 292:5,10  323:13  <b>situation</b> [4] 294:12  309:13 313:2,23  <b>six</b> [2] 209:22 210:6  <b>sixty</b> [1] 19:16  <b>size</b> [2] 87:3 90:12  <b>slides</b> [1] 208:11  <b>small</b> [1] 27:7  <b>snapshot</b> [1] 160:18  <b>so-called</b> [1] 336:6  <b>Society</b> [1] 1:16  <b>someone</b> [18] 29:20  108:25 109:8 144:8,8  159:5 175:20 184:13  190:12 193:7 225:10  265:5,6,8 303:7,8 321:13  360:16  <b>sometime</b> [9] 92:13 97:2  150:5,7 253:4 261:24  279:18 300:5 328:8  <b>sometimes</b> [9] 67:4,19  67:20 69:16 132:16  211:24 213:19 245:16  360:11  <b>somewhat</b> [1] 113:2  <b>somewhere</b> [2] 19:18  214:11  <b>soon</b> [2] 182:17 322:10  <b>SOP's</b> [5] 213:7,14 214:5  214:14 215:10  <b>SOPs</b> [1] 213:7  <b>sorry</b> [18] 34:24 44:11  45:3 81:14 198:4 205:13  206:17 217:6,10 219:25  219:25 235:9 238:17  253:24 271:22 274:3  290:16 333:9  <b>sort</b> [8] 20:3,4 21:12  25:22 26:21 27:13 36:22  303:20  <b>sorts</b> [2] 104:21 335:1  <b>sought</b> [3] 256:12 258:3  327:14  <b>sound</b> [2] 268:15 362:10  <b>sounding</b> [2] 287:14,15  <b>sounds</b> [2] 187:10 287:18  <b>source</b> [2] 245:9,12  <b>sources</b> [1] 301:18  <b>speak</b> [28] 52:24 86:23  113:15 114:6 116:20  119:4 156:13 157:10  173:24 192:3 193:9,17  193:22,23 194:25 251:4  276:7 277:14 279:9,24  289:20 350:21,22 352:2  358:25 359:6,9 360:16  <b>Speaker</b> [2] 287:4  288:20  <b>speaking</b> [11] 23:20  26:20 67:4 157:21 198:3  198:15 278:3 299:24</p>	<p>311:12,16 314:9  <b>speaks</b> [3] 80:3 193:10  277:23  <b>special</b> [5] 69:24 199:2  201:1 232:19 281:5  <b>specific</b> [5] 67:11 78:11  203:1,22 312:5  <b>specifically</b> [6] 43:9  66:3 161:4 336:4 338:25  359:22  <b>specificity</b> [2] 213:24  214:1  <b>specifics</b> [1] 318:15  <b>specified</b> [1] 233:3  <b>specimens</b> [1] 215:2  <b>speculate</b> [1] 222:14  <b>speculating</b> [1] 95:7  <b>speed</b> [5] 113:22 114:2  137:17 273:10 353:12  <b>spelled</b> [3] 76:16 84:18  85:1  <b>spells</b> [1] 85:18  <b>spend</b> [2] 110:1,3  <b>spending</b> [1] 263:25  <b>spends</b> [1] 87:12  <b>spent</b> [6] 7:25 62:17  110:5 233:12 239:25  320:3  <b>spoke</b> [13] 45:14 136:19  159:11 288:10 296:20  297:4 334:17,22,24  356:20 358:14 359:7,7  <b>spoken</b> [3] 48:19 167:17  176:25  <b>spokesperson</b> [4] 86:15  86:18,24 192:5  <b>spreadsheet</b> [3] 210:17  220:19 225:25  <b>spring</b> [5] 33:8,16 122:3  122:6 127:17  <b>St</b> [17] 70:23 71:8 72:2  106:19 172:5 173:5 184:2  187:19 202:4,22 206:3  206:10,13 214:22 215:1  362:7,11  <b>Stacey</b> [1] 1:17  <b>staff</b> [18] 17:6,19 147:8  179:4 180:17,18 183:9  183:12,13 185:18,20  316:9 326:6 340:24,25  346:17 347:9,12  <b>staffing</b> [3] 233:1 326:7  334:23  <b>stage</b> [2] 120:9 257:22  <b>stages</b> [2] 69:9 128:16  <b>staining</b> [2] 213:24  215:22  <b>stand</b> [3] 2:2 193:17  244:10  <b>standard</b> [5] 173:8  178:17 198:23 213:12  214:5  <b>standards</b> [5] 86:7  215:12 326:1 334:25  343:5</p>	<p><b>standing</b> [4] 60:8 196:25  304:15,19  <b>stands</b> [1] 137:1  <b>start</b> [13] 55:21 115:10  120:25,25 121:17,23  128:13 137:15 301:1,18  315:4 320:6 322:24  <b>started</b> [9] 95:6 180:21  181:19 182:18 219:5  300:21 301:5,6 336:15  <b>starting</b> [7] 185:11  186:13 262:7 349:11  350:3,25 351:1  <b>starts</b> [4] 113:8 120:22  121:14,25  <b>state</b> [3] 187:17 294:11  343:21  <b>statement</b> [6] 85:17,24  266:17 312:6 313:7  343:14  <b>statements</b> [3] 292:2,6  295:1  <b>states</b> [2] 86:5 229:12  <b>stating</b> [1] 23:11  <b>stations</b> [1] 137:7  <b>statistical</b> [9] 22:21 23:8  54:25 55:12 56:5 57:20  57:23 234:25 235:3  <b>statistics</b> [3] 20:25 21:3  57:22  <b>status</b> [23] 32:12 52:12  52:13,15 53:12,17,19  54:5 136:21 159:3,18  160:16 209:20 212:3  213:17 215:5 216:3,15  222:19 223:12 224:7  259:24 353:7  <b>staying</b> [1] 313:18  <b>steps</b> [2] 180:6,9  <b>still</b> [25] 22:1 91:12  105:19 119:22 147:16  152:1 182:12,13,16  197:23 209:3,5 212:9  218:4 247:19 256:8,10  288:3 298:22 320:23  321:1 349:20,20,22  360:19  <b>stipend</b> [7] 122:25 131:2  131:3,12 280:16 282:12  283:2  <b>stood</b> [1] 330:3  <b>stories</b> [1] 154:3  <b>story</b> [14] 137:6,16,22  149:11 153:5,5,6,22  154:16 155:9 160:23  243:10 300:8 354:4  <b>strategic</b> [2] 82:18,25  <b>strategy</b> [3] 78:5 119:11  119:12  <b>stream</b> [1] 88:14  <b>strength</b> [3] 291:21  292:1 299:7  <b>strengthen</b> [1] 119:16  <b>stress</b> [1] 263:22  <b>stringency</b> [1] 208:20  <b>stringent</b> [1] 287:4</p>	<p><b>strong</b> [3] 164:4 287:3,5  <b>strongly</b> [2] 289:21  356:6  <b>structure</b> [7] 68:2,10  76:5 77:9 88:11 212:23  306:16  <b>structured</b> [3] 104:19  105:4 109:23  <b>structures</b> [1] 89:17  <b>study</b> [1] 322:21  <b>stuff</b> [4] 129:2 224:3  226:4 344:6  <b>sub-optimal</b> [1] 215:2  <b>subcommittee</b> [8]  254:14 255:5 257:15  258:4,18 262:14 263:10  263:14  <b>subhead</b> [4] 135:8,11  136:3,3  <b>subheads</b> [1] 135:24  <b>subject</b> [6] 17:22 27:14  28:22 56:4 236:24 318:10  <b>subjected</b> [2] 236:6  289:14  <b>submission</b> [7] 80:13  113:7 123:12 127:16  131:4,5 132:13  <b>submissions</b> [3] 113:11  120:11,19  <b>submit</b> [4] 82:18,22  121:4 128:3  <b>submitted</b> [3] 82:25  113:17 133:18  <b>subsequent</b> [4] 206:9  222:24 328:9 329:21  <b>subsequently</b> [3] 47:13  49:6 144:17  <b>substance</b> [2] 102:20  234:22  <b>successfully</b> [1] 65:17  <b>such</b> [10] 99:7 115:6  246:5 282:7 307:20  309:13 340:19 343:22  344:16 348:24  <b>suffer</b> [1] 26:6  <b>suffering</b> [1] 171:25  <b>suggest</b> [17] 28:9,19  123:11 160:2 162:2  195:23 203:24 230:15  234:6 243:14 249:20  292:19 305:10 314:20,24  315:7 342:10  <b>suggested</b> [12] 28:10  29:1 194:23 198:20 212:7  226:13 251:18,19 314:24  320:14 332:25 334:10  <b>suggesting</b> [8] 35:8  38:13 141:19,25 279:17  309:11 312:24 333:2  <b>suggestion</b> [9] 28:17  152:11 202:16 204:8  253:13 261:10 313:12,20  313:24  <b>suggestions</b> [1] 181:3  <b>suggests</b> [3] 28:23 29:20  35:5</p>	<p><b>Suite</b> [1] 100:18  <b>summarizes</b> [1] 343:4  <b>summary</b> [4] 79:24  121:10 283:17 336:16  <b>summation</b> [1] 293:3  <b>summer</b> [4] 33:9 96:18  97:2 274:19  <b>supplied</b> [2] 297:11  299:4  <b>supply</b> [1] 353:2  <b>support</b> [8] 67:3 68:21  69:22 87:16 88:12 147:8  147:15 286:13  <b>supports</b> [1] 88:15  <b>suppose</b> [6] 49:24 152:6  177:8 180:13 263:1  311:21  <b>supposed</b> [1] 185:15  <b>surface</b> [1] 326:18  <b>surfaced</b> [1] 139:2  <b>surprise</b> [1] 41:9  <b>surprised</b> [3] 358:14  359:3 360:9  <b>Susan</b> [1] 168:19  <b>suspect</b> [6] 128:2 154:8  155:21 169:11 316:8  317:20  <b>sworn</b> [3] 2:6 61:1  104:14  <b>synopsis</b> [1] 160:14  <b>system</b> [12] 75:19 87:25  88:16 105:25 108:18  113:10,12 273:18 288:19  331:6 333:19 334:11  <b>systems</b> [4] 125:22  126:21,22 130:15</p>
<b>-T-</b>				
				<p><b>t</b> [3] 208:21,21 210:20  <b>table</b> [2] 2:1 10:23  <b>takes</b> [2] 128:23 306:21  <b>taking</b> [7] 113:13 128:14  182:8 255:17 257:9 262:5  314:4  <b>talks</b> [7] 129:18 201:15  207:24 235:10 307:3  343:11,11  <b>Tansy</b> [15] 96:19,22  149:23 153:14 155:16  156:14,15 157:5,21  166:18 167:16 220:11  250:18 316:13 317:22  <b>task</b> [4] 36:15 298:5  300:24 301:14  <b>tasks</b> [1] 233:3  <b>Taylor</b> [26] 1:13 2:3 4:2  4:3,4,9,10,23 5:3,18 6:6  6:24 7:9,17 8:4,11,18,22  9:21 10:17 11:4,10,20  12:2,22 13:2  <b>teaching</b> [1] 208:1  <b>team</b> [10] 172:12,18  175:1,6,8 176:7,15  177:18 179:6 216:22</p>

<p><b>technical</b> [10] 6:5,14,23 10:8,10 145:6 149:6 180:12 183:3,5</p> <p><b>technical/medical</b> [1] 212:24</p> <p><b>techniques</b> [1] 208:14</p> <p><b>technologist</b> [2] 342:16 342:23</p> <p><b>technologist's</b> [1] 343:3</p> <p><b>technologists</b> [12] 175:19 199:1 200:25 201:25 208:1 213:23 229:21 232:18,20 286:10 287:6 289:6</p> <p><b>technology</b> [25] 124:10 124:14 125:5,6,7,9,11 125:13,14,19 126:21 129:23,25 183:6,9,17 320:16 326:2,10 333:5,6 333:10,14 334:9 335:4</p> <p><b>telling</b> [10] 54:16 99:1 115:5 267:6 295:9 325:8 331:24 333:9 336:6 339:1</p> <p><b>temporary</b> [1] 91:4</p> <p><b>ten</b> [2] 15:25 16:8</p> <p><b>tend</b> [2] 272:4 278:4</p> <p><b>tenish</b> [1] 239:9</p> <p><b>tenor</b> [1] 140:23</p> <p><b>tense</b> [1] 32:23</p> <p><b>tenure</b> [1] 123:19</p> <p><b>term</b> [10] 16:5 176:19 230:3,8 232:4 286:11,17 286:20 325:7 336:21</p> <p><b>terminology</b> [6] 177:14 230:11 233:13,19,23 237:6</p> <p><b>terms</b> [82] 9:13 12:5 14:24 16:5 17:6,9 24:4 27:13 31:22 32:11 45:19 50:7 51:4 52:19 57:20 64:18 69:1 74:11 76:21 84:13 86:17 87:5,22 89:3 89:15 98:6 103:14 105:15 107:9 110:6,19 111:7 112:2,10 119:16 123:18 126:8 127:21 131:11 147:3 148:24 152:6 156:16 160:16 170:7 175:2 179:1 181:21 192:3 194:8 199:11 200:24 210:5 212:16 224:3 227:1 228:18 236:20 237:14 241:11 269:3 274:6 287:16 288:1,22 292:5 294:7,10 304:15 305:9 309:21 318:21 319:20 321:19 322:1 326:13 328:19 337:11,13 348:6 352:12 358:4</p> <p><b>Terry</b> [4] 97:13,15 98:19 210:21</p> <p><b>Terry's</b> [1] 97:18</p> <p><b>test</b> [34] 7:4 8:7,8 38:1,7 38:23 71:24 172:7 186:13 202:18 231:2 234:16 236:3 248:10 260:4 274:24 288:14 290:4 295:24 296:1 297:20</p>	<p>305:24 308:20,22 310:14 310:15 312:13 313:17 321:21 322:4,10 326:20 338:15 347:25</p> <p><b>tested</b> [6] 7:23 19:15 235:16 237:12 238:16 288:15</p> <p><b>testimony</b> [2] 7:10 13:12</p> <p><b>testing</b> [56] 1:2,14 4:11 6:2,3 7:21 26:10 70:21 70:23 71:7 141:23 171:19 171:22,23 172:8 173:5 173:15,21 174:11,19 175:16 179:19,22 180:11 184:2,5,8,9,21 185:4 186:2 187:19 198:23 200:10 201:24 202:5,24 203:6 204:8 208:12,17 208:22 212:7 228:5 229:20 230:19 285:23 288:9 289:10 295:15 307:9 314:3,12 327:8 331:22 362:4</p> <p><b>tests</b> [33] 5:11 71:25 72:1 172:5,6 180:5 199:18 209:24 210:3 235:12,13 236:6,13,21 237:9 260:18 276:14 286:7 289:3,12 296:4,5,7 297:20 298:11 301:6,19 303:7 305:24 306:15 307:9 308:17 319:20</p> <p><b>text</b> [1] 212:25</p> <p><b>thank</b> [28] 13:1,3,5 25:7 25:10 54:21 59:12,22,25 60:7 61:21 90:9 136:9 170:18 195:25 197:11,18 206:18 217:11 279:20 280:8,13 281:14,18 283:19 313:23 361:9,11</p> <p><b>thankful</b> [1] 24:20</p> <p><b>themselves</b> [17] 69:24 83:20 85:6,12 109:25 129:9 185:7 219:11,14 223:2 296:11,18 300:11 303:4 319:21 335:13 339:6</p> <p><b>theory</b> [1] 266:10</p> <p><b>there'd</b> [3] 282:4 347:15 350:5</p> <p><b>there'll</b> [1] 132:25</p> <p><b>therefore</b> [2] 282:10 332:9</p> <p><b>they've</b> [6] 77:2 80:2 179:7 184:4 185:3 260:12</p> <p><b>thinking</b> [8] 41:4 92:24 177:12,19 246:6 275:15 275:16 331:10</p> <p><b>third</b> [3] 34:19,25 172:11</p> <p><b>thirdly</b> [1] 75:2</p> <p><b>Thompson</b> [5] 91:6 92:3 92:10 108:2 301:14</p> <p><b>thought</b> [20] 15:1 16:20 26:22 29:20 31:4,11 36:15 138:10,20 139:11 157:18 164:6,7 177:8 204:14 268:16 273:20 281:1 313:11 353:13</p>	<p><b>thousands</b> [1] 133:20</p> <p><b>three</b> [31] 17:18,23 18:19 19:5,11,18,23 20:11 32:5 37:11,17 66:18 79:4,9 81:6 92:13 116:5,25 150:6 169:5 201:24 209:13,17 211:10 228:17 229:21 284:3 300:6 323:12 344:12 360:8</p> <p><b>three-year</b> [1] 82:24</p> <p><b>through</b> [77] 3:2 6:13 10:8 25:2 27:25 32:2 35:19 37:24 55:7 61:11 61:15,18,19 63:19 66:17 76:5,11,13,25 80:18 81:2 88:10,20 91:5 99:17 106:17 111:9 113:8,9 115:15 118:11 120:13 122:1,15 126:12 128:15 128:19 130:24 131:9 134:16 136:17 137:9 143:10,10 170:6 180:3 209:19 212:4 217:16 221:17 228:16,24 229:1 238:8 239:14 251:10 285:24 295:17 296:12,16 301:17 304:17,18 305:20 305:20 306:2 307:25 310:21 322:4,13 323:15 324:15,19 332:6,7 342:4 352:21</p> <p><b>throughout</b> [6] 95:18 96:6 168:8 206:18 329:23 360:7</p> <p><b>throwing</b> [1] 175:2</p> <p><b>Thursday</b> [2] 322:15 323:2</p> <p><b>tied</b> [2] 114:10 201:8</p> <p><b>Tilley</b> [39] 149:25 157:9 157:13 158:22 159:6 160:2 164:4 167:19 168:10,14 182:25 183:2 187:11 188:24 196:19 218:3 240:15 242:23 243:5 251:16,23 259:1 264:16 266:24 269:5 270:1 271:10 272:13,18 313:25 314:20 321:15 336:5,22 337:17 339:1,7 340:2 343:21</p> <p><b>Tilley's</b> [1] 315:21</p> <p><b>timeframe</b> [3] 116:12 120:18 272:16</p> <p><b>timeframes</b> [1] 276:20</p> <p><b>timelines</b> [1] 304:7</p> <p><b>times</b> [6] 106:18 147:21 194:22 299:12 341:19 342:9</p> <p><b>timing</b> [1] 113:1</p> <p><b>tissue</b> [7] 15:20 38:24 40:4 50:7,17,19 208:14</p> <p><b>title</b> [1] 171:19</p> <p><b>today</b> [24] 117:25 142:17 154:4 164:11 195:14 268:18 269:14 289:13 292:5,9 293:11 324:24 327:5 337:20 338:23 341:17 342:11,14 343:7 348:5 351:20 352:5,7,22</p>	<p><b>together</b> [27] 62:25 69:16 78:4 87:14 126:23 128:9 131:9 137:23 149:14 154:6,11 156:2,7 157:1 157:15 159:12 167:15 178:8 179:6 210:14 230:25 232:14 257:5 289:7 300:24 301:9 338:7</p> <p><b>Tom</b> [5] 2:2 4:3 13:6 25:15 66:16</p> <p><b>tomorrow</b> [2] 268:20 361:7</p> <p><b>tone</b> [1] 12:19</p> <p><b>too</b> [8] 90:13 109:9 128:8 151:11 201:9 205:13 245:16 260:9</p> <p><b>took</b> [35] 15:12 16:6 27:15 32:1 35:19 67:12 92:3 97:3 167:23 184:22 185:9 187:25 195:25 204:19,24 217:15 259:16 270:24 271:10 276:23 293:25 294:24 304:13 323:23 327:7 329:19,22 330:1 335:25 338:16,19 349:24 354:1,1 357:13</p> <p><b>top</b> [7] 208:12 210:15,22 211:19 220:18,22 276:11</p> <p><b>topic</b> [4] 100:24 165:7 194:6 322:25</p> <p><b>topical</b> [3] 102:17 116:19 360:15</p> <p><b>total</b> [12] 6:3 19:14,17 20:19 54:17 88:22 236:4 237:8 238:1,16 242:10 271:22</p> <p><b>touch</b> [1] 205:16</p> <p><b>towards</b> [1] 18:19</p> <p><b>track</b> [1] 300:19</p> <p><b>tracked</b> [1] 300:20</p> <p><b>trained</b> [4] 176:17 178:1 213:23 216:10</p> <p><b>training</b> [7] 183:13 185:20 199:2 201:1 208:5 232:19 287:6</p> <p><b>transcribed</b> [1] 362:9</p> <p><b>transcript</b> [1] 362:3</p> <p><b>transferred</b> [1] 94:12</p> <p><b>transferring</b> [2] 135:7 136:2</p> <p><b>transmission</b> [1] 220:12</p> <p><b>Transparency</b> [2] 78:18 82:19</p> <p><b>transpired</b> [1] 28:6</p> <p><b>Transportation</b> [1] 88:17</p> <p><b>Treasury</b> [2] 122:24 131:11</p> <p><b>treated</b> [3] 208:16 303:9 349:21</p> <p><b>treating</b> [9] 256:1 306:9 307:5,7 308:22 309:6 312:3,8,14</p> <p><b>treatment</b> [31] 9:9 16:17 16:25 21:25 37:2 44:24 47:13 48:18,21 49:2,7</p>	<p>52:13,14,16 53:18,21 171:24 175:17,17,21,24 176:8,10,13,14 238:17 247:22 288:13 307:11 308:8 357:5</p> <p><b>trees</b> [1] 276:11</p> <p><b>Trinity</b> [1] 62:2</p> <p><b>Trish</b> [10] 186:21 205:19 211:23 213:16 214:2,7 214:15,19 215:12 216:13</p> <p><b>troublesome</b> [2] 182:14 320:21</p> <p><b>true</b> [4] 107:18 108:2 249:12 362:3</p> <p><b>truly</b> [1] 289:8</p> <p><b>trust</b> [2] 16:12 32:5</p> <p><b>trustworthy</b> [1] 288:17</p> <p><b>try</b> [3] 190:7 284:7,10</p> <p><b>trying</b> [14] 30:21 42:1 117:3 123:17 126:16 127:20 131:9 148:14 181:5 190:6 191:10 234:6 298:3 342:5</p> <p><b>Tuesday</b> [6] 155:22,23 182:2 319:3 322:24 324:24</p> <p><b>tumor</b> [10] 9:19 38:7,14 46:11,14,25 49:17 51:21 52:10 54:8</p> <p><b>turn</b> [4] 74:18 90:10 152:12 245:8</p> <p><b>turned</b> [8] 115:19,20 116:3,9,14 117:11 142:3 299:16</p> <p><b>Turner</b> [3] 114:18 118:19 119:8</p> <p><b>turning</b> [1] 152:3</p> <p><b>twenty-seven</b> [1] 19:16</p> <p><b>two</b> [53] 5:15 10:25 33:15 44:9,9,11,17,25 54:21 79:4 112:23 114:14,23 115:6 116:25 119:5 150:6 163:5,9 184:15 193:20 197:13 201:16,22 202:14 202:22 203:11 204:5 205:20 207:18 211:10 216:12 219:15 229:14 232:13 234:2 237:7 247:6 258:24 268:3 300:6 327:15 328:19,24 331:14 338:1 341:18 343:1 352:10 356:1 359:20 360:3 361:3</p> <p><b>type</b> [1] 25:4</p> <p><b>types</b> [1] 124:16</p> <p><b>typo</b> [1] 214:1</p> <hr/> <p><b>-U-</b></p> <p><b>u</b> [1] 208:21</p> <p><b>Uh-hm</b> [14] 38:11 45:8 47:19 96:8 201:19 205:23 206:5 207:6 210:24 235:6 258:15 285:10 348:21 359:17</p> <p><b>ultimately</b> [1] 269:6</p> <p><b>Um-hm</b> [9] 135:22</p>
--	--	--	---	--

155:12 157:7 167:21  
173:11 220:24 221:23  
229:16 321:24  
**unanswered** [1] 325:4  
**uncertain** [1] 319:15  
**uncomfortable** [1]  
349:12  
**uncommon** [4] 111:24  
134:18 360:8,21  
**uncovered** [1] 285:19  
**under** [23] 34:11 37:17  
63:17 75:1 78:17 82:19  
84:4,21 89:6 129:21  
135:12 172:10 198:3,21  
201:9 207:14,22 209:23  
212:10 234:18 235:8  
256:8,10  
**underlying** [1] 217:2  
**understand** [75] 28:16  
30:22 39:1 44:25 45:12  
45:14 49:22,25 51:7,22  
54:2 55:6 56:25 67:23  
74:21 89:5,6 93:13 98:25  
99:21 116:17 119:9 132:3  
135:5 136:12 137:13  
175:7 185:7 188:13 190:7  
202:23 203:2,18 205:20  
206:10 209:25 210:14,20  
213:12 214:22 220:6  
225:17 236:5 240:6  
243:11 248:3 249:10  
254:6 255:23 257:25  
263:11 264:4 266:21  
276:6 277:17 279:12,14  
280:18 289:22 290:3  
296:9 298:9 301:2,4  
305:23 306:23 308:2  
312:11 315:3 335:11,25  
338:4 355:8 359:23  
360:18  
**understood** [43] 6:1  
7:25 8:5 9:13,25 11:13  
12:5 26:5,25 38:24 42:2  
42:12,25 46:1 49:21 50:1  
50:6 53:2 129:7 142:7  
172:18 199:16 202:8,21  
203:25 204:25 233:23  
236:15 237:25 254:9,13  
258:6 261:20 262:14  
264:7,20 265:14 266:3  
277:7 290:8 335:15  
356:10 358:21  
**undertake** [1] 80:24  
**undertaken** [1] 294:21  
**unfold** [1] 336:12  
**unfolded** [4] 24:24  
104:16 164:25 350:1  
**unfortunate** [1] 296:14  
**unfortunately** [1]  
298:19  
**unique** [4] 126:5 129:19  
129:20,21  
**unit** [1] 230:25  
**unless** [3] 20:14 59:10  
247:8  
**unlike** [1] 147:5  
**unnecessary** [1] 263:22  
**unusual** [1] 162:1

**up** [72] 4:15 18:8 19:7  
31:22 33:23 34:3 37:10  
43:12 47:7 49:6 52:6  
55:17,21 60:25 61:8  
91:21 113:22 114:2  
121:16 124:23,24 126:1  
131:19 133:17 135:1  
136:20 137:17,24 140:1  
140:15 145:8,24,25 181:2  
183:7 190:11 193:17  
195:5,18,22 196:13,18  
196:25 228:16 230:4  
239:4 244:11 245:23  
246:14 256:6 273:10,25  
276:20 277:14,15,16  
278:9,16 279:24 283:22  
284:6 295:12 298:25  
313:11 315:19 316:14  
317:17 324:11 336:2  
344:23 353:12 354:7  
**upcoming** [2] 121:2  
128:1  
**update** [12] 69:12 144:11  
150:9 152:5,6 159:2  
221:13 297:7 298:2 318:2  
345:21 347:3  
**updated** [22] 73:18,23  
74:10 99:4 143:19 144:15  
144:16,24 151:9,17  
158:13 210:19 211:4,5  
211:14 217:20 220:21  
221:21 226:6 359:19,20  
360:6  
**updates** [3] 142:17  
144:20 360:16  
**upfront** [2] 274:22 356:2  
**upset** [7] 12:15 27:24  
37:3,9 354:17,18 355:21  
**urgency** [1] 41:18  
**used** [20] 25:24,24 125:14  
126:22 150:24 158:9  
186:24 208:23 230:12,20  
231:13 234:2 286:20  
288:14 326:11,11 333:1  
333:14 334:12 337:9  
**uses** [1] 229:23  
**using** [8] 20:14 133:15  
197:25 202:9 205:13  
234:4 334:8 360:19

-V-

**vagaries** [1] 344:15  
**vague** [2] 127:21 333:4  
**validate** [1] 290:6  
**validated** [1] 184:15  
**validation** [3] 199:20  
208:19,24  
**validity** [1] 19:21  
**value** [1] 15:13  
**varied** [1] 69:7  
**variety** [5] 62:25 63:9  
98:19 121:4 124:4  
**various** [2] 124:11,12  
**vary** [3] 66:23 67:2 69:23  
**varying** [1] 324:22  
**VENTANA** [2] 212:11

213:15  
**verbal** [3] 14:3 178:9,13  
**verses** [1] 248:5  
**version** [5] 211:6 215:14  
222:5,15 226:6  
**versions** [1] 211:10  
**versus** [2] 12:6 181:5  
**vicinity** [2] 100:11,13  
**view** [16] 35:5 123:21  
181:19 191:17 192:5,9  
194:2 228:20 230:7  
249:24 250:1 251:14  
267:8 342:5 355:25  
356:22  
**viewing** [1] 352:21  
**views** [1] 175:3  
**virtue** [1] 152:9  
**vis-a-vis** [1] 74:23  
**visit** [1] 207:22  
**visualize** [1] 131:13  
**voice** [1] 252:13  
**volume** [2] 61:4,5  
**voluntarily** [1] 261:3  
**VPs** [2] 111:3,11

-W-

**wait** [1] 274:24  
**waiting** [1] 192:22  
**walk** [3] 278:10 323:15  
324:18  
**walked** [1] 261:3  
**walking** [1] 278:11  
**wanting** [2] 263:21  
349:10  
**warning** [1] 154:15  
**Wednesday** [2] 182:3  
319:4  
**weed** [1] 237:18  
**week** [9] 147:22 211:4  
217:19,20 300:6 323:3,6  
325:9 331:18  
**weekend** [1] 344:13  
**weeks** [3] 219:7 250:24  
267:22  
**Wegrynowski** [21]  
186:21 205:19 206:9  
209:3,12 210:18 212:20  
213:17 214:2,7,16,19  
215:3,13,19,23 216:2,7  
216:13,19 220:20  
**Wegrynowski's** [2]  
211:23 217:12  
**welfare** [1] 348:2  
**wellbeing** [1] 352:13  
**Western** [1] 1:17  
**whatsoever** [3] 72:10  
98:13 198:17  
**wherever** [1] 279:16  
**whichever** [3] 19:13  
60:13 71:16  
**who'd** [2] 255:18 348:3  
**who've** [1] 292:15

**whole** [25] 122:18 137:19  
157:19 233:12 252:17  
263:25 266:19 268:22  
269:3,9 301:22 306:6,13  
307:4 308:15 314:9,11  
320:3 324:5 326:12,13  
335:12,14 350:10 354:18  
**Williams** [3] 32:3  
205:18 206:14  
**Wiseman** [677] 2:6 60:21  
60:22 61:1,4,21,24 63:7  
63:18,25 64:10,14 65:3  
65:7,12,24 66:9,22 67:22  
68:14 69:6 70:8,14,24  
71:3,14,23 72:9,25 73:6  
73:19 74:4,15 75:5,25  
76:12 77:8 78:21 79:1,5  
79:12,18,22 80:11 81:11  
81:16,22 82:12,21 83:1  
83:12,23 84:8,25 86:9  
86:20,25 87:3,8 88:23  
89:9,13 90:9,16,20,24  
91:3,9,18,24 92:4,8,17  
92:22 93:7,22 94:2,13  
94:25 95:5,11,15,19,23  
96:3,7,12,17,24 97:4,8  
97:12,17 98:2,8,12 99:8  
99:25 100:6,12,16,25  
101:9,14,20 102:1,23  
103:4,10,17,25 104:7,12  
105:22 106:9,23 107:3  
107:12,19,24 108:4,9,14  
109:5,17 110:14,18,25  
111:12,16,22 112:6,21  
115:8,16,24 116:6,11  
117:2,9,16 118:8,15,24  
120:4,14,21 122:11,17  
123:5 124:3,22 125:4,12  
125:25 126:15 127:8,18  
129:13 130:3,7,13,20,24  
131:6,20 132:5,9,15  
134:9,17,22 135:14,23  
136:6,22 137:4 138:5,13  
138:18 139:23 140:4,12  
140:17,24 141:5,18  
142:15 143:4,13,18,23  
144:3 145:2,10,15 146:1  
146:9,23 147:2 148:2,8  
148:12,19,23 149:8,17  
149:24 150:22 151:13,19  
152:4,18 153:1,8,12,17  
153:21 154:17,23 155:5  
155:11,19 156:22 157:6  
157:12,25 158:20 159:8  
159:13,19 160:7,11 161:1  
161:7,17,21 162:6 163:6  
163:10,20 164:19 165:15  
165:19 166:5,15,19 167:4  
167:8,12,20,25 168:5,12  
168:20,24 169:10,20  
170:3,20,22 171:2,11,16  
172:16,21 173:1,10,13  
173:16,23 174:6,13,20  
175:9 176:1,5,12 177:2  
177:7,13,20,25 178:10  
178:20,24 179:24 181:14  
181:18 183:1,22 184:3,6  
185:5 186:4,23 187:2,7  
187:22 188:5,15,23 189:3  
189:24 190:25 191:5,16  
191:21,25 192:11,18  
193:3,19 195:9,17,21

196:9,17 197:4,19,20  
198:11,16 199:5,23 200:6  
200:12,20 201:3,7,18  
202:7,25 203:15,19 204:7  
204:17 205:2,7,11,14,22  
206:4,19,22 207:1,5  
210:8,10,23 211:7,11,16  
213:9 217:16,24 218:7  
218:10,12,17,21 219:1  
220:2,3,8,23 221:2,9,14  
221:18,22 222:1,7,21  
223:6,15 224:15,21 225:2  
225:9,23 226:7,17,22  
227:16,20,25 228:21  
229:5,15 230:10,24 231:7  
231:11 232:11 233:10,20  
234:1,20,21 235:5,21,23  
236:8,17,25 237:5,19,24  
238:5,13,18,22 239:23  
240:8,18 241:7,15,25  
242:5,12,17,25 243:22  
244:15,23 246:4,15,21  
246:25 247:11 248:2,9  
248:18,23 249:3,9,19  
250:4,9 251:7,13 252:6  
252:10,16 253:7,18,25  
254:8 255:12 256:4,9,15  
256:25 258:7,14,19,23  
259:4,9,19,25 260:25  
261:15,19 262:6,11,16  
262:21 263:3 264:12,19  
265:4,19 266:2 267:3,13  
268:2 269:12 270:2,6,10  
270:16,20 271:1,12,21  
272:1,14 273:2,13 274:4  
274:9,20 275:9 276:2  
277:4,9,18 278:18,22  
279:2,11 280:2,13,21  
281:11,15,21 282:2 283:6  
283:11,16,19,23 284:2  
284:24 285:3,9 286:17  
286:24 287:13,23 289:19  
289:24 290:13,18,25  
291:25 292:8 293:17  
294:3,15 296:18 297:1  
298:1,16 299:11,18 300:1  
300:16 301:15 302:2,13  
302:17,22 303:19 304:1  
304:5 305:3,13,17 306:21  
307:2 308:4,19 309:2,8  
309:14 310:4,24 311:3,7  
311:13,18 312:15,19  
313:3,24 314:1,15,23  
315:11,16,22 316:2,7,22  
317:14 318:4,14 319:19  
320:1,11 321:12,25 323:7  
323:20 324:3,9,16 325:3  
325:15,19,23 326:17  
327:13,16,22 328:4,11  
328:15,21 329:1,7,16  
330:8,21 331:1,7,11,15  
332:3,20 333:11,17,25  
334:6,21 335:19 336:10  
336:24 337:3,8,12,23  
339:5,15,24 340:5,22  
341:23 342:3 343:25  
344:19 345:2,6,10,15,20  
346:2,11,15,21 347:2,13  
347:19 348:12,16,20  
349:2 351:8,14,23 353:3  
353:10,19 354:10,14,20  
355:18,24 356:9,15,18  
356:21 357:15,21 358:1



<p>358:7,18,23 359:10,16 359:24 360:4,12 <b>wish</b> [5] 7:22 24:25 60:2 121:11 252:2 <b>wished</b> [1] 209:4 <b>withheld</b> [1] 164:12 <b>withhold</b> [3] 266:13 268:9 355:4 <b>withholding</b> [1] 354:9 <b>within</b> [58] 10:21,25 13:24 18:22 19:4 20:17 21:22 24:1 58:3 62:19 63:1 64:11 65:22 75:2 77:5,9,20,25 78:12 87:24 88:4 90:11 106:13 109:20 111:3,11 119:22 121:12 121:22 122:23 125:9 126:5 131:25 134:4 135:8 135:16,17,24 179:20 182:8 189:13 228:5 231:1 231:20 265:6,8 266:14 269:7 281:25 282:6 323:6 323:8 325:10,11,12 331:5 344:25 350:18 <b>without</b> [6] 19:21 59:5 144:11 283:14 336:6 339:1 <b>witness</b> [4] 60:11,18,19 174:25 <b>witnesses</b> [1] 59:16 <b>women</b> [9] 171:24 287:10 288:5,8,10 289:11 295:14,17 322:2 <b>wonder</b> [2] 18:7 244:21 <b>wondering</b> [10] 125:20 127:12 132:12 156:14 240:11 279:7 302:5,10 307:18 308:1 <b>Woodland</b> [1] 1:8 <b>word</b> [6] 25:23 80:19 103:21 119:24 237:7 249:10 <b>wording</b> [2] 33:5 194:15 <b>words</b> [6] 8:6 29:7 30:16 84:17 199:8 229:23 <b>worked</b> [4] 68:25 105:20 108:18 113:9 <b>workings</b> [1] 112:16 <b>works</b> [3] 122:1 170:23 195:8 <b>world</b> [1] 230:16 <b>worthy</b> [1] 264:10 <b>write</b> [1] 193:8 <b>written</b> [9] 32:20 101:12 144:5 189:14 190:20 193:7 209:14 342:15,16 <b>wrong</b> [34] 29:21,22 60:3 180:25 181:22,22 182:13 182:22 183:21 184:4 185:7,9 267:16 288:11 318:20 319:16,18,20 320:8,8 321:8 322:19,22 325:2,14 331:22 337:5 337:16,19 338:10,12 347:20 349:13 355:5 <b>wrote</b> [2] 38:8 58:12</p>	<hr/> <p style="text-align: center;"><b>-X-</b></p> <hr/> <p><b>X</b> [2] 133:7,19</p> <hr/> <p style="text-align: center;"><b>-Y-</b></p> <hr/> <p><b>y</b> [1] 208:21 <b>year</b> [28] 83:7,11 90:21 90:21 114:11 116:2 120:23 121:3,16 122:1 128:1,8,12,22,22 130:16 135:11 256:21 261:25 283:1 289:16 292:12 293:18 297:6 299:3,4 300:5 342:12 <b>year's</b> [4] 120:20 133:2 280:25 281:7 <b>years</b> [6] 62:18 72:8 80:3 216:12 285:23 289:17 <b>yesterday</b> [6] 7:10 23:1 26:3 35:18 45:15 54:23 <b>yet</b> [9] 21:5 35:10,16 184:4 260:14 290:11 300:9,12 303:9 <b>yourself</b> [7] 89:8 102:17 107:18 153:6 232:9 251:4 341:7 <b>Youth</b> [7] 88:1,2 114:13 114:16,21 119:2,7</p> <hr/> <p style="text-align: center;"><b>-Z-</b></p> <hr/> <p><b>Zachary</b> [3] 114:18 118:19 119:8 <b>zero</b> [1] 51:25 <b>zeroed</b> [1] 126:3</p>			
--	--	--	--	--