

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 11, 2008

Appearances:

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

- Rolf Pritchard/Jenny Chai Her Majesty in Right of NL

- Peter Browne/Jane Hennebury Doctors Kara Laing et al

- Daniel Simmons Eastern Regional Integrated
. Health Authority

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

- Mark Pike NL Medical Association
- Jennifer Newbury Canadian Cancer Society (NL Division)
- David Eaton Central, Western and Labrador-Grenfell
. Regional Integrated Health Authorities

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- EXHIBIT P-0199 Pg. 4

- 1 THE COMMISSIONER:
- 2 Q. Good morning. Please be seated. Mr. Coffey.
- 3 COFFEY, Q.C.:
- 4 Q. Yes, Commissioner, just before Ms. Chaytor
- 5 resumes with Mr. Wiseman, there was an Exhibit
- 6 P-0199 which had, when Mr. Osborne first
- 7 started to testify, I had moved to enter, it
- 8 had been indicated perhaps Mr. Pritchard would
- 9 enter it. He and I have discussed it since
- 10 and we would both ask that Exhibit P-0199 be
- 11 entered.
- 12 THE COMMISSIONER:
- 13 Q. Be entered. Entered, P-0199.
- 14 EXHIBIT P-0199 ENTERED INTO EVIDENCE.
- 15 THE COMMISSIONER:
- 16 Q. Ms. Chaytor?
- 17 MR. ROSS WISEMAN, EXAMINATION-IN-CHIEF BY SANDRA CHAYTOR,
- 18 Q.C. (CONTINUED)
- 19 CHAYTOR, Q.C.:
- 20 Q. Thank you, Commissioner. Good morning, Mr.
- 21 Wiseman.
- 22 MR. WISEMAN:
- 23 A. Good morning.
- 24 CHAYTOR, Q.C.:
- 25 Q. Mr. Wiseman, we started yesterday with me

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1 asking you about your duties, responsibilities
 2 as Minister of Health. And I also pointed you
 3 or directed you to legislation with respect to
 4 the duties of the Regional Health Authorities.
 5 What is the legislation which sets out your
 6 duties as Minister of Health?
 7 MR. WISEMAN:
 8 A. Relative to the Health Authorities?
 9 CHAYTOR, Q.C.:
 10 Q. Well, in general, your duties as Minister with
 11 respect to all of your duties?
 12 MR. WISEMAN:
 13 A. I'm not certain.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, we have the Executive Council Act and
 16 there's a regulation under the Executive
 17 Council Act which is called The Department of
 18 Health and Community Services Notice. Are you
 19 familiar with that?
 20 MR. WISEMAN:
 21 A. No, I'm not.
 22 CHAYTOR, Q.C.:
 23 Q. No.
 24 MR. WISEMAN:
 25 A. The content, no.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. So that's not something that would have
 3 been brought to your attention upon resuming
 4 or taking on the responsibilities as Minister
 5 of Health?
 6 MR. WISEMAN:
 7 A. I can't recall it, no.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. And it's not something that you're
 10 familiar with today?
 11 MR. WISEMAN:
 12 A. It's not something I'm familiar with today,
 13 no.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. Now I just want to refer you to Section
 16 4 of that Legislation. And I appreciate
 17 you're saying you're not familiar with it.
 18 But Section 4 says that the--and the heading
 19 to it is "Powers and Duties of the Minister."
 20 And it says, "The powers, duties and functions
 21 of the Minister include: the supervision,
 22 control and direction of all matters relating
 23 to (a) the preservation and promotion of
 24 health, (b) the prevention and control of
 25 disease, and (c) the administration of

Page 7

1 hospitals, long-term facilities and personal
 2 care facilities." And then it goes on with
 3 all the way up to (m), so there's a number of
 4 other duties. But those three in particular
 5 and it says, "Which are not or insofar as they
 6 are not the responsibility of another
 7 minister, agency, body, corporation, board,
 8 organization or person." So in setting out
 9 the duties of the Minister it includes, "The
 10 supervision, control and direction of all
 11 matters relating to the preservation and
 12 promotion of health, the prevention and
 13 control of disease, the administration of
 14 hospitals, long-term facilities and personal
 15 care facilities which are no or insofar a they
 16 are not the responsibility of another
 17 minister, agency, body, corporation, board,
 18 organization or person." But what that may or
 19 may not mean, you're not able to say, you've
 20 never taken any advice as to what that may
 21 include?
 22 MR. WISEMAN:
 23 A. I've never had a discussion around that
 24 particular piece of legislation, no.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. Now, I believe when I left off
 2 yesterday, we were going to turn to your
 3 briefing note of May 16th. And in fact, there
 4 are two briefing notes for this date, and you
 5 indicated that might not be unusual because
 6 with a matter that's unfolding or changing
 7 relatively quickly, you may be updated more
 8 than once in one day. If we could have,
 9 please, I believe it's P-0126, page 13? Okay.
 10 Now, Minister, if we just scroll down, we'll
 11 see that this is what appears the next
 12 briefing note that you were provided with.
 13 And I can't say that for certain because
 14 there's two dated this date, unless you're
 15 able to shed some light on that. This one is
 16 again drafted by Beverley Griffiths and
 17 approved by Moria Hennessey. They're not
 18 timed, there's no time on it.
 19 MR. WISEMAN:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. So I don't know if this is the next one you
 23 received, but in terms of the order in which
 24 we appear to have received, this is the next
 25 one. So this one and the other one dated May

Page 9

1 16th, both, I would take it, would have been
 2 brought to your attention on May 16th, is that
 3 right?
 4 MR. WISEMAN:
 5 A. As I said yesterday, the process of updating
 6 briefing note, if, for example, and I don't
 7 recall, I wouldn't be able to give you a
 8 definitive answer about whether I saw both of
 9 them or to be able to speak to when I received
 10 either one of them back then. But if, in
 11 fact, one of them were prepared earlier in the
 12 day and I hadn't seen it and the other one was
 13 an update to that one, and that might be the
 14 one that I may have used at a point in time,
 15 but I can't confirm that for you with some
 16 certainty.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. And would you anticipate, however, that
 19 you would have seen these briefing notes prior
 20 to heading into the House on May 16th?
 21 MR. WISEMAN:
 22 A. Yes, that would have been reasonable to
 23 expect.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. That would be one of the purposes of

Page 10

1 the briefing note?
 2 MR. WISEMAN:
 3 A. I would have seen one of these notes before
 4 heading into the House, there would have been
 5 a note for that day. Because we don't know
 6 the times for either of these I wouldn't want
 7 to suggest that I saw both of them because I
 8 can't recall.
 9 CHAYTOR, Q.C.:
 10 Q. Right. But you would have had at least one of
 11 them -
 12 MR. WISEMAN:
 13 A. I would have had at least one of them, yes.
 14 CHAYTOR, Q.C.:
 15 Q. And the purpose of the briefing note would be
 16 again to update you so that if need be you
 17 could refer to your briefing note in answering
 18 questions in the House?
 19 MR. WISEMAN:
 20 A. The briefing note wouldn't be the sole source
 21 of that, any commentary I may make in the
 22 House or elsewhere. Briefing note would be
 23 something that the staff would prepare as one
 24 piece. But one of the other pieces that would
 25 help inform my commentary in the House or

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1 anywhere else, for that matter, would be
 2 discussions I would have with officials in
 3 addition to what might be in the briefing
 4 note.
 5 CHAYTOR, Q.C.:
 6 Q. Yeah, okay.
 7 MR. WISEMAN:
 8 A. So the briefing note would never be intended
 9 to be an all-inclusive commentary about what
 10 we are talking about at the time with respect
 11 to the topic.
 12 CHAYTOR, Q.C.:
 13 Q. Right. But the key messages and other
 14 suggested responses are intended to be
 15 possible answers that you could give should
 16 the issue arise in the House?
 17 MR. WISEMAN:
 18 A. Should be, yes.
 19 CHAYTOR, Q.C.:
 20 Q. Yes, okay. And if we come down under your
 21 "Key Messages", and you'll see there's a
 22 number of anticipated questions again, some of
 23 which have been carried forward. And it
 24 includes the fact that "In December Eastern
 25 Health reported 117 of 939 breast cancer

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1 patients had to have treatment changes because
 2 of the ER/PR retesting. Why are court
 3 documents obtained CBC showing that almost
 4 three times as many tests were wrong?" And it
 5 goes on with, "It took more than a year for
 6 Eastern Health to go public and release the
 7 results of the ER/PR testing review. Are they
 8 hiding the real numbers?" And I believe real
 9 numbers is something you referred to, in fact,
 10 yesterday, in answering one of my questions.
 11 "Why has Eastern Health not released the test
 12 results for 176 patients who have died since
 13 the original tests?" And then it continues on
 14 from there. The first key message says,
 15 "Eastern Health has been accountable to the
 16 public. A technical briefing was held on
 17 December 11th, 2006 at which time information
 18 on the numbers of patients retested at Mount
 19 Sinai and those requiring treatment changes
 20 was released to the media." Now, Mr. Wiseman,
 21 based on what your opinion was as to what
 22 happened on the December 11th, 2006 technical
 23 briefing, was this to be your position headed
 24 into the House on May 16th, that Eastern
 25 Health has been accountable to the public?

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1 MR. WISEMAN:
 2 A. They hadn't provided full disclosure in
 3 December 6th (sic.) and I had said that
 4 yesterday and that would have been my belief
 5 on the 16th of May, as well.
 6 CHAYTOR, Q.C.:
 7 Q. Would you have been confident to stand up in
 8 the House and say "Eastern Health has been
 9 accountable to the public."?
 10 MR. WISEMAN:
 11 A. I mean, I would have, as I said publicly last
 12 year, as well, that I believe that Eastern
 13 Health should have provided a fuller
 14 disclosure in December of '06.
 15 CHAYTOR, Q.C.:
 16 Q. So is the answer to my question no?
 17 MR. WISEMAN:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. Now, if we continue on with this briefing
 21 note, under "Background" there's a little more
 22 detail in the first bullets than what appeared
 23 in your prior, or your immediately previous
 24 briefing note as to the DAKO system and the
 25 Ventana system. Do you recall discussion

Page 14

1 around this and did you ask for further
 2 clarification regarding the actual testing
 3 techniques?
 4 MR. WISEMAN:
 5 A. We had a brief discussion around it, but it
 6 wasn't, I wouldn't consider it an expert
 7 commentary about the, you know, the difference
 8 between the two systems. You know, a very
 9 basic understanding that I had was that the
 10 DAKO system required a lot of, you know,
 11 manual preparation whereas the Ventana system
 12 was more automated. But beyond that I
 13 wouldn't have gained a great understanding of
 14 what might be the significance between the two
 15 of them. There was that difference.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And do you know the source of the
 18 information that's obtained here now in these
 19 two bullets?
 20 MR. WISEMAN:
 21 A. Again, as I said to you yesterday, anything
 22 you see in the briefing notes that would be
 23 written by officials in the Department, they
 24 come from two sources, either their personal
 25 knowledge or knowledge that's held within the

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1 Department or in the case of any reference to
 2 something that might be happening within our
 3 four Authorities, then they would gather that
 4 information from someone within the four
 5 Authorities.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. If we continue on with the briefing
 8 note, "The details on the test results are as
 9 follows," and you'll see at the bottom of the
 10 page and continuing into page 15 of the
 11 Exhibit, there's now quite some detail of the
 12 numbers?
 13 MR. WISEMAN:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. And if you reflect back to the briefing note
 17 that we looked at yesterday, April 19th
 18 briefing note, of course, those numbers were
 19 not included. The only numbers that were
 20 included were the total cases reviewed and the
 21 number of tests that had been sent to Mount
 22 Sinai and the number of deceased, I believe,
 23 was reflected and the number of people
 24 requiring treatment change. So this now, what
 25 we're seeing here in your briefing note

Page 16

1 includes at the top of page 15: live patients
 2 whose samples were retested, 763; patients
 3 with no change in ER/PR results and no change
 4 in treatment recommended were 433; patients
 5 with no change in ER/PR results but a change
 6 in treatment recommended by expert panel, 13;
 7 patients where ER/PR test results were
 8 different following retesting, 317, to give a
 9 total of 763. So those numbers, the patients
 10 where ER/PR test results were different
 11 following retesting being 317, that's a new
 12 number that's showing up in your briefing note
 13 now?
 14 MR. WISEMAN:
 15 A. Um-hm. It is.
 16 CHAYTOR, Q.C.:
 17 Q. And, of course, so from May 16th, 2007 is the
 18 first time that the question and answer
 19 briefing notes that you've been provided with
 20 shows the number of patients with changed
 21 results and that's the first time that's
 22 recorded in your briefing note. Now, and I
 23 appreciate you had referred to that the day
 24 before in the House. Now, Mr. Wiseman, you
 25 indicated--I'd just ask you to reflect on that

Page 17

1 for a moment, bearing in mind that one of the
 2 purposes of your Q and A briefing note is to
 3 provide you with key messages and the
 4 responses that you could give in the House,
 5 should you ask. And I understand yesterday
 6 that you said that the people in your
 7 Department were aware that Eastern Health had
 8 not disclosed the full numbers. Has it
 9 occurred to you that perhaps your Department
 10 not only was aware that Eastern Health had not
 11 disclosed the full numbers but, in fact, they
 12 accepted that position and that they too did
 13 not plan to release the full numbers?
 14 MR. WISEMAN:
 15 A. I don't recall saying yesterday that the
 16 people in the Department knew that Eastern
 17 Health hadn't disclosed the full numbers in
 18 December.
 19 CHAYTOR, Q.C.:
 20 Q. At some point when you spoke to Mr. Abbott, he
 21 was aware that the full numbers had not been
 22 disclosed.
 23 MR. WISEMAN:
 24 A. I think I said when I chatted with Mr. Abbott
 25 on the 15th, you know, I wasn't--I didn't make

Page 18

1 a definitive commentary yesterday to that
 2 effect. What I'd indicated yesterday, as I
 3 recall my comment, was that, you know, Mr.
 4 Abbott, you know, appeared to have some
 5 knowledge of it. I forget the exact phrase I
 6 might have used, but I didn't suggest that
 7 staff knew that Eastern Health had
 8 intentionally, you know, not disclosed the
 9 information. I indicated in my conversation
 10 with Mr. Abbott that, you know, he appeared to
 11 have some knowledge of it or appeared to have
 12 some comfort level. I forget the word I might
 13 have used yesterday, but as I recall
 14 yesterday's commentary, it was something to
 15 that effect.
 16 CHAYTOR, Q.C.:
 17 Q. Right. So at some point Mr. Abbott became
 18 aware that Eastern Health has not disclosed
 19 the full numbers?
 20 MR. WISEMAN:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Your briefing notes for the first time on May
 24 16th, 2007, your briefing notes that you would
 25 head into the House of Assembly with are

Page 19

1 containing the full numbers?
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And we know today that whether or not those
 6 numbers are accurate or not, that's a
 7 different issue.
 8 MR. WISEMAN:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. But now the number in terms of the patients
 12 who had a changed results are appearing for
 13 the first time in your briefing note of May
 14 16th, 2007. That's after CBC has released the
 15 numbers, they've obtained the numbers and
 16 released them.
 17 MR. WISEMAN:
 18 A. Right.
 19 CHAYTOR, Q.C.:
 20 Q. So for the first time your March 9th, 2007
 21 briefing note did not contain the number of
 22 patients who had changed results?
 23 MR. WISEMAN:
 24 A. That's right.
 25 CHAYTOR, Q.C.:

Page 20

1 Q. Your April 19th, 2007 briefing note did not
 2 contain the number of patients who had changed
 3 results?
 4 MR. WISEMAN:
 5 A. Right.
 6 CHAYTOR, Q.C.:
 7 Q. After those results have been made public
 8 through the media for the first time the
 9 Department's briefing note to you in 2007
 10 contains that results?
 11 MR. WISEMAN:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Can you give any explanation as to why that
 15 would be?
 16 MR. WISEMAN:
 17 A. Because of the discussion that took place the
 18 day before. You remember I had commented in
 19 the briefing that I had in bringing people
 20 from Eastern Health in to the Department to
 21 start talking about, because I needed, as I
 22 said to you, wanted to get a clear
 23 understanding of what went on here, what
 24 happened and to get some sense of what the
 25 true numbers were. And so what I wanted to

Page 21

1 make sure is that any future briefing note
 2 reflected the current, understand the full
 3 complete picture in the current understanding
 4 we had of any numbers. So what we're seeing
 5 here on the 16th's briefing, in this
 6 particular briefing note, you know, reflects,
 7 you know, that, you know, that discussion that
 8 took place on the 15th and my desire to ensure
 9 that what I had before me was as complete a
 10 picture as anyone else had.

11 THE COMMISSIONER:
 12 Q. Mr. Wiseman, perhaps we understood the
 13 question differently.

14 MR. WISEMAN:
 15 A. Okay.

16 THE COMMISSIONER:
 17 Q. As I understand it, you are now explaining why
 18 the numbers are in the briefing note that
 19 we're now looking at?

20 MR. WISEMAN:
 21 A. Yes.

22 THE COMMISSIONER:
 23 Q. I understood the question to be is why didn't
 24 the briefing notes earlier within the
 25 Department, why is it your Department wasn't

Page 22

1 producing briefing notes which contained those
 2 numbers earlier than this?

3 MR. WISEMAN:
 4 A. I apologize, Madam Commissioner, I
 5 misunderstood your question.

6 CHAYTOR, Q.C.:
 7 Q. Thank you, Commissioner.

8 MR. WISEMAN:
 9 A. And I--and that I can't answer for you, I
 10 don't know.

11 CHAYTOR, Q.C.:
 12 Q. Have you asked anyone?

13 MR. WISEMAN:
 14 A. I don't recall asking why they weren't there
 15 before, but I recall having--making sure that
 16 what I was getting from here on in was as
 17 complete a picture as was possible.

18 CHAYTOR, Q.C.:
 19 Q. Yes, and I appreciate that. So it didn't
 20 occur to you that the issue that's now in the
 21 media is that Eastern Health did not disclose
 22 all of the numbers back in December, 2006,
 23 that's the issue that's in the media which
 24 brings this to your attention and you don't
 25 ask anyone in your Department, "Well, why

Page 23

1 don't I have these numbers in my briefing
 2 note?"

3 MR. WISEMAN:
 4 A. I can't recall asking that very specific
 5 question. We had a lot of discussions around
 6 what were the numbers and how come they
 7 weren't reported earlier. I can't recall very
 8 specifically whether I directed any question
 9 to someone in the Department to say, "Why
 10 wasn't this figure in the briefing note of
 11 April or March or some other date?" I can't
 12 recall specifically asking that question. I
 13 was--I recall, you know, having a high level
 14 of frustration that the numbers that I had
 15 before me may not have been the complete
 16 numbers that were available to everybody. And
 17 so there's a real shift, as you can see from
 18 the note from the 15th to this one, it's much
 19 more detail laid out here, and that came about
 20 as a result of that discussion.

21 CHAYTOR, Q.C.:
 22 Q. Yes. And I understood that and I understood
 23 that you went and you've now gotten two
 24 briefing notes on the 16th and there's been
 25 further--so you've had 24 hours to come up to

Page 24

1 speed on this. And I'm just wondering,
 2 though, that you don't think to ask, "Well,
 3 did you accept that position? Did we agree
 4 with that position, that we're not going to
 5 disclose the numbers, is that why it's not
 6 reflected in the briefing notes?" You haven't
 7 asked that question of anyone?

8 MR. WISEMAN:
 9 A. No, I haven't. Why they weren't there, I
 10 can't recall specifically asking the question.
 11 This was, you know, my interest at this
 12 particular point in time was to gain as much
 13 knowledge as I could, to find out as much as I
 14 could about the issue. I needed to make sure
 15 on a go forward basis that, you know, we--I
 16 had better information available than
 17 obviously, you know, had been disclosed
 18 previously, so I needed to have this fuller
 19 picture.

20 CHAYTOR, Q.C.:
 21 Q. So whether your Department had accepted
 22 Eastern Health's position not to disclose the
 23 full numbers, you don't know?

24 MR. WISEMAN:
 25 A. No.

Page 25

1 CHAYTOR, Q.C.:

2 Q. Because you've never asked?

3 MR. WISEMAN:

4 A. As I, I mean, I the issue around the briefing

5 notes and why they weren't in the briefing

6 notes, I can't recall. You know, what may

7 have come out in the discussion, I really

8 don't know. As I understand it, the, you

9 know, the officials in the Department, I can't

10 recall asking the question at this particular

11 time. I understand from the officials in the

12 Department, though, you know, that as I said

13 yesterday, you know, my conversation with Mr.

14 Abbott gave me an impression that he had, he

15 at least had some knowledge of it, he wasn't--

16 when him and I discussed it on the 15th, you

17 know, he was speaking with it--to it with some

18 comfort. But I didn't ask, I don't recall, at

19 least, asking the question very specifically,

20 "Is this the first time you're hearing it?

21 Did you know this before?" I don't recall

22 having that line of questioning with him or

23 having that kind of a conversation with him.

24 CHAYTOR, Q.C.:

25 Q. Mr. Wiseman, would you agree with me that it

Page 26

1 appears to be a glaring omission?

2 MR. WISEMAN:

3 A. That the information was not in the briefing

4 note?

5 CHAYTOR, Q.C.:

6 Q. Yes.

7 MR. WISEMAN:

8 A. Yes. Whatever information was in the briefing

9 note--the briefing that was provided by

10 Eastern Health in November, that level of

11 detail should have reflected in future

12 briefing notes.

13 CHAYTOR, Q.C.:

14 Q. Yes, okay. Perhaps we could look at the

15 second briefing note for May 16th? And in

16 fact, I don't know, as I said, I don't know if

17 it is the second one, but it's the--it's also

18 dated May 16th. And I believe it's page 19 of

19 the same exhibit number, 0126. Page 19,

20 please? Okay, and if we just scroll down on

21 this one, too, Mr. Wiseman, you'll see that I

22 think it's the same drafters. Beverley

23 Griffiths is the drafter, approved by Moira

24 Hennessey. And, Mr. Wiseman, this time there

25 are seven anticipated questions, so there's a

Page 27

1 couple of extra anticipated questions here.

2 The third bullet is the same, "Why has Eastern

3 Health not released the test results for 176

4 patients who have died since the original

5 test?" Then the fourth bullet refers to "NDP

6 leader, Lorraine Michael, stated in the media

7 yesterday 'If I were a woman who was dealing

8 with breast cancer, I think I would not want

9 to deal with our system here in Newfoundland

10 and Labrador.' Should the public have

11 confidence in Eastern Health and its ability

12 to treat breast cancer patients?" The next

13 one, I believe, is new, as well. "Will

14 government undertake an independent review of

15 how Eastern Health has handled this case?"

16 And of course, by this point in time I believe

17 there were calls that that would happen. The

18 next bullet "Has Eastern Health now notified

19 all affected patients of the results of

20 retesting and why wasn't this done sooner?"

21 And the last bullet is new, again referring to

22 question period and Ms. Michael asking the

23 Minister if he will communicate to Eastern

24 Health the need for a public information

25 campaign with details so the people would feel

Page 28

1 confident in receiving treatment in

2 Newfoundland and Labrador. And I believe you

3 and I discussed that yesterday, Mr. Wiseman?

4 MR. WISEMAN:

5 A. Yes, we did, yes.

6 CHAYTOR, Q.C.:

7 Q. Okay. If we come down then under the "Key

8 Messages" and the second bullet refers to,

9 "Eastern Health was advised by its legal

10 counsel to withhold this information pending

11 court action." And we talked about that

12 yesterday, as well. And I understand that

13 was, you've indicated that was the information

14 on the full number who had, full number of

15 patients who had changed test results. Now,

16 under the next bullet it says, "An expert

17 panel comprised of oncologists, pathologists

18 and surgeons in St. John's recommended that

19 the focus of retesting should be on patients

20 who are alive. Eastern Health has been

21 working with families of deceased patients on

22 an individual basis and has provided retesting

23 results upon request." Now, first of all, the

24 notion of an expert panel comprised of

25 oncologists, pathologists and surgeons

Page 29

1 recommending the focus be on patients who are
 2 alive, what was your understanding of that,
 3 did you ask any questions around that?
 4 MR. WISEMAN:
 5 A. As I understood it, the expert panel was put
 6 in place to provide--to review reports as they
 7 came back from Mount Sinai and that was, you
 8 know, the biggest function that they had. And
 9 obviously they would have been the physicians
 10 who would have involved in, you know, the
 11 diagnostic part of it or the treatment piece
 12 of each of these patients or the group of
 13 individuals who would be in the best position,
 14 had the best knowledge to be able to, you
 15 know, determine then a course of treatment or
 16 whether or not the treatment needed to change
 17 and they were providing, you know, that kind
 18 of medical, clinical advise to Eastern Health.
 19 CHAYTOR, Q.C.:
 20 Q. So you understood this was the same panel that
 21 actually did the review of certain of the
 22 results that came back, this is the same panel
 23 that made this recommendation?
 24 MR. WISEMAN:
 25 A. The reference to an expert panel, the most

Page 30

1 times that I heard reference to Eastern--the
 2 expert panel was as a part of the review
 3 process of test results coming back from Mount
 4 Sinai. That was the--most frequently when
 5 there was a reference to the expert panel, it
 6 was always in that context. I hadn't
 7 questioned whether or not this was the same
 8 expert panel who was doing that particular--
 9 providing the advice here as was doing--as
 10 was, in fact, reexamining the test results as
 11 they came back.
 12 CHAYTOR, Q.C.:
 13 Q. Did your officials in your Department tell you
 14 that your predecessor had challenged that to
 15 some extent and was fairly adamant that the
 16 deceased patients also be retested, did anyone
 17 convey that to you?
 18 MR. WISEMAN:
 19 A. I can't recall it, no.
 20 CHAYTOR, Q.C.:
 21 Q. And you certainly don't see it reflected in
 22 our briefing note?
 23 MR. WISEMAN:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. No. This idea of "Eastern Health has been
 2 working with families of deceased patients on
 3 an individual basis and has provided retesting
 4 results upon request."
 5 MR. WISEMAN:
 6 A. I'm sorry.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, take your time.
 9 MR. WISEMAN:
 10 A. I'm sorry, the last part of your question,
 11 could you repeat it, please?
 12 CHAYTOR, Q.C.:
 13 Q. It's the last sentence of that bullet, the
 14 second sentence.
 15 MR. WISEMAN:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Eastern Health has been working with families
 19 of deceased patients on an individual basis
 20 and has provided retesting results upon
 21 request." How did you understand that Eastern
 22 Health had been working with families of
 23 deceased patients on an individual basis?
 24 MR. WISEMAN:
 25 A. As I understood, the results of, the test

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1 results of those individuals who had died were
 2 available to the families and that they were,
 3 you know, that's how they were communicating
 4 the results directly to the families.
 5 CHAYTOR, Q.C.:
 6 Q. So did you understand that they were actually
 7 retesting the deceased?
 8 MR. WISEMAN:
 9 A. I don't know if at this particular point in
 10 time or not I had a good--at some point in
 11 time I became aware that all of the test--all
 12 of the tests for the deceased had not been
 13 concluded. There was a point in time where
 14 some of the original--as I understood it and
 15 recall it back then, was that some of the test
 16 results that were sent out initially for
 17 retesting, some of them included tests of
 18 those, some individuals who had already died,
 19 and those were, those were done as a part of
 20 that original group that were sent out. And
 21 so that would have--any reference at this
 22 particular point, I suspect, would have been
 23 to that. I understood that, as well, that,
 24 you know, because some of these test results
 25 going out for retesting went out in batches,

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1 they all didn't go out the same time, and but
 2 I understood then that at some point there was
 3 a real change in focus to make sure that those
 4 that were still alive were retested earlier
 5 and the focus became on getting those test
 6 results done. And I can't give you some
 7 definitive answer about what I would have
 8 meant or what, if we had a discussion at all
 9 around this particular sentence in this
 10 bullet.
 11 CHAYTOR, Q.C.:
 12 Q. So--but this is something that's being put
 13 there as a key message for you that Eastern
 14 Health has been working with families of
 15 deceased patients on an individual basis and
 16 has been providing retesting results upon
 17 request?
 18 MR. WISEMAN:
 19 A. And I would have -- you know, and my
 20 understanding of it at some -- and I can't
 21 recall exactly when during the course of last
 22 year, but at some point in time I became aware
 23 that initially the test results that went out,
 24 some of them included the test results of some
 25 of the individuals who were deceased, and then

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1 there was a shift to move towards focusing on
 2 those who were living, but the test results
 3 were available to the family members who would
 4 inquire of Eastern Health.
 5 CHAYTOR, Q.C.:
 6 Q. Right, and the concept, though, of working
 7 with families of deceased patients on an
 8 individual basis, does that imply to you that
 9 there's something more going on than we
 10 haven't even tested all the deceased patients,
 11 and we're going to release the results if and
 12 when they're requested?
 13 MR. WISEMAN:
 14 A. I didn't -- I can't recall getting into that
 15 level of exploration with them.
 16 CHAYTOR, Q.C.:
 17 Q. I'm just saying what would you take from that
 18 sentence? Like, if that were to be told to
 19 the public that Eastern Health is working on
 20 an individual basis with the families of the
 21 deceased, what does that imply?
 22 MR. WISEMAN:
 23 A. It would suggest that, you know, those
 24 individual family members whose loved ones
 25 have now died are able to get information from

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1 Eastern Health, and Eastern Health is in some
 2 way trying to facilitate that information
 3 being shared.
 4 CHAYTOR, Q.C.:
 5 Q. That they're trying to somehow facilitate
 6 that?
 7 MR. WISEMAN:
 8 A. Yeah.
 9 CHAYTOR, Q.C.:
 10 Q. If the information at all even exists?
 11 MR. WISEMAN:
 12 A. Well, I'm not sure you --
 13 CHAYTOR, Q.C.:
 14 Q. Well, they hadn't tested all the deceased at
 15 this time?
 16 MR. WISEMAN:
 17 A. No. Obviously, for those results that are
 18 available, they're making them available to
 19 the families.
 20 CHAYTOR, Q.C.:
 21 Q. And how would the deceased families even know
 22 that they should make contact?
 23 MR. WISEMAN:
 24 A. There was kind of a -- I'm just trying to
 25 think of when this came about. There's been a

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1 couple of public notices by Eastern Health, I
 2 can't recall the dates, whether it pre-dates
 3 this here, I really can't recall to be honest,
 4 but there was a couple of times when Eastern
 5 Health have used the media to publish
 6 notifications of how individuals may want to
 7 contact them, but whether it pre-dates this
 8 here, I don't recall.
 9 CHAYTOR, Q.C.:
 10 Q. So to your knowledge, on May 16th, 2007, when
 11 you're reading that, you don't have that
 12 knowledge?
 13 MR. WISEMAN:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. The next bullet then talks about the multiple
 17 factors involved and we discussed that
 18 somewhat yesterday, "There has been no blame
 19 assigned within Eastern Health", and again it
 20 repeats, "Since legal proceedings have been
 21 initiated, Government will have to allow the
 22 legal process to determine if, in fact, error
 23 has occurred", and you indicated yesterday you
 24 took exception with that, that's not your
 25 position?

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1 MR. WISEMAN:
 2 A. That's right.
 3 CHAYTOR, Q.C.:
 4 Q. And it's showing up again now in your briefing
 5 note the next day. Did you raise that as an
 6 issue with Moira Hennessey on this day?
 7 MR. WISEMAN:
 8 A. I don't recall.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, the next bullet says, "The public should
 11 have every confidence in Eastern Health. The
 12 fact that the Authority made a voluntary
 13 decision to retest ER/PR results over a period
 14 of time goes beyond what has been done
 15 anywhere else in the country. Furthermore,
 16 Eastern Health has conducted two independent
 17 quality reviews of the laboratory and has
 18 implemented a number of measures to provide a
 19 high standard of ER/PR testing for new breast
 20 cancer patients. These measures include a
 21 quality management program", and it goes on
 22 from there. Now, Mr. Wiseman, the idea that
 23 it was a voluntary decision to retest, and
 24 going beyond what has been done anywhere else
 25 in the country, and that somehow we're the

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1 only province to have undertaken this
 2 retesting, the idea that that's been held out
 3 as being a good thing as opposed to that there
 4 was even a choice -- the idea that it's being
 5 held out, well, this is a good thing, Eastern
 6 Health voluntarily has gone back, done the
 7 retesting, we're the only ones in the country
 8 to do this, do you think that's misleading?
 9 MR. WISEMAN:
 10 A. The statement implies that there was, as you
 11 said, a choice. There really wasn't any
 12 choice but to retest these, so it's not a --
 13 it doesn't add any more credibility to Eastern
 14 Health or anyone else for that matter the fact
 15 that it was done voluntarily. It was, as
 16 you've just described and appropriately
 17 framed, there was no real choice here but to
 18 do redo these tests.
 19 CHAYTOR, Q.C.:
 20 Q. "It goes beyond what has been done anywhere
 21 else in the country" suggests that it wasn't
 22 done because we had a problem in Newfoundland
 23 and Labrador, it suggests that this was
 24 proactive in Newfoundland and Labrador. Why
 25 was the retesting done here, Mr. Wiseman?

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1 MR. WISEMAN:
 2 A. Because there had been concerns about the test
 3 results of the first time. The first test
 4 results themselves, there was some concern
 5 about their accuracy and they needed to be
 6 redone to ensure that we had an appropriate
 7 diagnosis and an appropriate understanding of
 8 the test results for each of these individuals
 9 who are impacted here.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, so you agree that there wasn't a choice?
 12 MR. WISEMAN:
 13 A. There wasn't.
 14 CHAYTOR, Q.C.:
 15 Q. It wasn't a voluntary decision?
 16 MR. WISEMAN:
 17 A. Not at all.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and the fact that whether or not it has
 20 ever taken place in the rest of the country --
 21 MR. WISEMAN:
 22 A. Is irrelevant.
 23 CHAYTOR, Q.C.:
 24 Q. Is irrelevant, and it would depend on whether
 25 or not it needed to take place anywhere else

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1 in the country?
 2 MR. WISEMAN:
 3 A. Exactly.
 4 CHAYTOR, Q.C.:
 5 Q. So insofar as you are having this put forward
 6 to you as something to stand up and say in the
 7 House of Assembly to the people of
 8 Newfoundland and Labrador, what do you say
 9 about this?
 10 MR. WISEMAN:
 11 A. I wouldn't use -- I haven't made that
 12 statement publicly.
 13 CHAYTOR, Q.C.:
 14 Q. No. Did you challenge the people who wrote
 15 this and ask them why would you ever suggest
 16 that I say that to the public?
 17 MR. WISEMAN:
 18 A. I can't recall having done, and -- I don't
 19 recall, and I don't think I did, actually. I
 20 think I might have shared with you yesterday
 21 that prior to the recent past, I wouldn't have
 22 gone into redrafting these briefing notes, nor
 23 spending a lot of time on questioning why they
 24 may be framed that way or what the logic might
 25 have been. I would have used the briefing

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1 notes as a guide to facilitate a discussion,
 2 and then I choose what I would take out of
 3 these briefing notes to repeat.
 4 CHAYTOR, Q.C.:
 5 Q. So you didn't take it up with anyone. Okay,
 6 this briefing note continues on then the next
 7 bullet, "Government is satisfied that through
 8 two independent reviews already conducted and
 9 new quality measures now in place, that this
 10 situation will not occur in the future, and
 11 your priority is to ensure quality health care
 12 for the residents of the province". Mr.
 13 Wiseman, Government was satisfied on May 16th,
 14 2007, that through two independent reviews
 15 already conducted and the new quality measures
 16 now in place that it will not occur in the
 17 future. Government had not seen the
 18 independent reviews, nor had Government asked
 19 to see other than Moira Hennessey back in the
 20 early stages of this. Government had not seen
 21 the two independent reviews, nor had been told
 22 the outcomes of the two independent reviews at
 23 this point in time, so how can Government be
 24 saying on May 16th, 2007, that it's satisfied
 25 that through those two reviews that this

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1 situation will not occur in the future.
 2 MR. WISEMAN:
 3 A. As I shared yesterday, I mean, the comfort
 4 level that I had in speaking in the House of
 5 Assembly and making the public comment around
 6 the quality of what's happening there now or
 7 what was happening at this point in time in
 8 2007, came about as a result of the
 9 understanding that I was given about the
 10 quality initiatives that had been put in
 11 place, and the training for staff, the
 12 additional staff being provided, the dedicated
 13 technologists, the Director of Laboratory
 14 Services, those initiatives together with the
 15 comment that the recommendations of these
 16 external reviews had been implemented, gave me
 17 the comfort to be able to say with some
 18 confidence at that time, you know, that the
 19 people of Newfoundland and Labrador should be
 20 assured that what's taking place there at that
 21 moment was quality work.
 22 CHAYTOR, Q.C.:
 23 Q. If we continue on then with the next bullet,
 24 "Eastern Health has notified all affected
 25 patients through communication with their

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1 physicians. Information was shared once
 2 retesting was completed. It was felt that
 3 informing patients of retesting prior to
 4 individual results being received would create
 5 anxiety without further information being
 6 shared", and, of course, we spoke on this
 7 yesterday because there was similar things
 8 said in the House, and you said yourself --
 9 you admitted that you'd said on several
 10 occasions that all the affected individuals
 11 had been contacted?
 12 MR. WISEMAN:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Mr. Wiseman, this issue of the anxiety to the
 16 patients, by the time you, as a representative
 17 of the Government, are in the public speaking
 18 to this issue, there have been many accounts
 19 in the media of people who say they hadn't
 20 been contacted and that's what we talked about
 21 yesterday, and you told us that you repeated
 22 that on several occasions. That was after
 23 receiving assurances from Eastern Health that
 24 they had all been contacted. Could any of
 25 them have -- did you make inquiries of other

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1 regional Authorities, could any of them have
 2 been from other regional Authorities?
 3 MR. WISEMAN:
 4 A. As I understand the individuals retested at
 5 Eastern Health, many of them were from many
 6 parts of the province, so someone may have had
 7 their surgery in Western Newfoundland or
 8 Central Newfoundland and the test results
 9 we're talking about here, the ER/PR tests,
 10 would have been conducted at Eastern Health.
 11 The patients involved may have been patients
 12 of one of these other four Authorities that
 13 may be living in some other part of the
 14 province, they weren't necessarily from
 15 Eastern Newfoundland.
 16 CHAYTOR, Q.C.:
 17 Q. And how did you understand they were to be
 18 communicated with? Did you understand it was
 19 all going through Eastern Health, or how did
 20 you understand -- how would they be
 21 communicated with?
 22 MR. WISEMAN:
 23 A. As I understood it, at this particular
 24 juncture here, I hadn't -- I don't recall
 25 having made that inquiry whether or not

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1 Western was doing the ones from Western, or
 2 whether or not Central was doing theirs. I
 3 don't recall at this particular point I had
 4 that particular discussion.
 5 CHAYTOR, Q.C.:
 6 Q. So you're going back to Eastern Health and
 7 getting assurances that they have been
 8 contacted?
 9 MR. WISEMAN:
 10 A. Have been contacted. Eastern Health was
 11 taking -- as I understood it, Eastern Health
 12 was assuming the responsibility to make these
 13 contacts.
 14 CHAYTOR, Q.C.:
 15 Q. And whether or not anyone else had that
 16 responsibility or the other Boards, you didn't
 17 make that inquiry, you understood it was
 18 Eastern Health's responsibility?
 19 MR. WISEMAN:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So, Mr. Wiseman, after receiving
 23 assurances from Eastern Health that they've
 24 all been contacted, you then make the
 25 assertion and repeatedly make the assertion,

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1 "all patients have been contacted"?
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Even though we're hearing patients in the
 6 public forum saying otherwise. At any point
 7 in time was any consideration given to the
 8 stress that that might be causing to the
 9 cancer patients, the fact that not only have
 10 they now been through this ordeal, the fact
 11 that many of them hear about it for the first
 12 time that there's retesting, they hear about
 13 it in the media and any stress that may have
 14 caused to them, but now the stress of having
 15 found the courage to come forward and say,
 16 well, not me, I haven't been contacted, the
 17 stress of hearing the Government speaking out
 18 on this issue for the first time and saying my
 19 Government doesn't believe me, was there any
 20 consideration given to that?
 21 MR. WISEMAN:
 22 A. I kept questioning it and I kept getting
 23 reassured by Eastern Health that they were, in
 24 fact, all contacted. Up until the -- I guess
 25 it was the end of May, or the end of June,

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1 rather, when we started to do this piece of
 2 work with the Centre for Health Information
 3 and that we started to reconcile the numbers,
 4 but initially, unfortunately, I took the
 5 repeated advice of Eastern Health and accepted
 6 their commentary that all had been contacted.
 7 CHAYTOR, Q.C.:
 8 Q. And repeated that in the House?
 9 MR. WISEMAN:
 10 A. And repeated that many times.
 11 CHAYTOR, Q.C.:
 12 Q. Regardless of what the people themselves or
 13 some of the people were saying?
 14 MR. WISEMAN:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Is there anything you'd like to say about that
 18 today?
 19 MR. WISEMAN:
 20 A. I now recognize that all the people were not
 21 contacted and that, you know, in terms -- in
 22 retrospect today, it would have been much more
 23 prudent to have acknowledged much earlier that
 24 they hadn't, and moved to start a process to
 25 reconstruct the information earlier than we

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1 did and it's unfortunate that I didn't do that
 2 earlier, but we moved to do that, as I said,
 3 on the appointment of Robert Thompson to a
 4 task force and they then in turn started a
 5 process to try to clearly reconstruct the
 6 communication piece here, to reconstruct the
 7 database to be able to clearly identify who
 8 was impacted by this retesting and the nature
 9 of the contact that had been made with them,
 10 and whether it was before the testing was
 11 done, after the testing was done, and who
 12 would have made the contact. We've since
 13 realized through that process that, yes, in
 14 fact, there were many people who weren't
 15 contacted, and in retrospect now, I should not
 16 have repeated it as frequent or for such an
 17 extended period of time as I did.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. If we could just -- one more point on
 20 this briefing note before we leave it, May
 21 16th, the last bullet, again this reflects
 22 back to the idea of it being a voluntary
 23 decision and going beyond what has been done
 24 elsewhere in the country. It says, "Residents
 25 should feel confident that we are the only

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1 province in Canada to have undertaken
 2 retesting of ER/PR results and to implement
 3 quality assurance practises to ensure accurate
 4 testing in the future". Now I would hope
 5 we're not the only province to implement
 6 quality assurance practises, the idea again
 7 that somehow this is a good thing and
 8 residents should feel confident that we've
 9 gone back and done this.

10 MR. WISEMAN:
 11 A. There's -- to repeat what I said a moment ago,
 12 you know, there is some comfort people should
 13 take in that we've implemented quality
 14 assurance, but making some comparisons to
 15 where we are with the rest of the country is
 16 somewhat irrelevant.

17 CHAYTOR, Q.C.:
 18 Q. And I take it you didn't raise that with Moira
 19 Hennessey, the idea that this would be a
 20 message to put out there?

21 MR. WISEMAN:
 22 A. No. Keep in mind that I'm the one delivering
 23 the message, and I wouldn't have said it.

24 CHAYTOR, Q.C.:
 25 Q. But I take it you would also want to make sure

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1 that your staff know what the appropriate
 2 messages should be for you to put out there?

3 MR. WISEMAN:
 4 A. Yes, which is a fair point, yes.

5 CHAYTOR, Q.C.:
 6 Q. So you head into the House May 16th armed with
 7 either one or both of those briefing notes.
 8 What happens?

9 MR. WISEMAN:
 10 A. The House of Assembly is -- obviously, this is
 11 an issue of interest not only to the people of
 12 the province, but the people in the House of
 13 Assembly, so that day in Question Period there
 14 were questions from the Opposition with
 15 respect to the issue.

16 CHAYTOR, Q.C.:
 17 Q. Yes. Perhaps we could have Exhibit P-0105,
 18 page seven. You were asked a question again
 19 by Mr. Ball, it appears, and in speaking to
 20 this, I just want to bring you down to -- he's
 21 referring to an article in the Telegram and
 22 he's quoting you as saying, "I understand and
 23 appreciate the dilemma that Eastern Health
 24 found themselves in trying to balance their
 25 responsibility to the patients who needed a

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1 change, referring to treatment, and their
 2 responsibility to protect the interests of the
 3 organization in the event of litigation", and
 4 he asked, "Given his ultimate role and
 5 responsibility to public health and safety in
 6 this province, does he still stand by this
 7 incredibly shocking statement". Mr. Wiseman,
 8 again this is him quoting something that
 9 appeared in the newspaper, what is this
 10 referring to? Did you make such a statement
 11 or anything in that regard that you understood
 12 the dilemma of trying to balance the
 13 responsibility to patients against the
 14 responsibility to protecting Eastern Health's
 15 interest in the wake of litigation?

16 MR. WISEMAN:
 17 A. What it refers to is -- indeed the day before
 18 that after the House of Assembly question
 19 period, there was a media scrum, and I was
 20 making a comment, and I can't recall in
 21 response to what kind of question --

22 CHAYTOR, Q.C.:
 23 Q. I'm sorry, this is after you came out of the
 24 House on May 15th?

25 MR. WISEMAN:

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1 A. The 15th, yes, and the article that he's
 2 reference here is a story in the Telegram and
 3 was a story that covered the media scrum that
 4 occurred on May 15th, the day before this day
 5 here, and I was commenting about the -- I
 6 can't recall the exact question, but in terms
 7 of why -- relative to why Eastern Health would
 8 have withheld the information that they did in
 9 December's briefing, and I was commenting,
 10 which is the point that we recently discussed
 11 in the briefing note with respect to the
 12 rationale Eastern Health used as to why they
 13 didn't provide a fuller disclosure in
 14 December, and the Telegram is quoting what I
 15 would have said during that media scrum, and I
 16 don't have the article in front of me, but I
 17 acknowledged that Eastern Health had, in fact,
 18 used legal advice in determining what they
 19 disclosed during that period, and I commented
 20 around their trying to balance the position
 21 they were in, trying to balance what the
 22 lawyers were telling them and what they wanted
 23 to do in the best interest of patients. It
 24 wasn't an expression of my personal opinion.
 25 I was commenting on what Eastern Health had

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1 provided me.
 2 CHAYTOR, Q.C.:
 3 Q. What Eastern Health had told you?
 4 MR. WISEMAN:
 5 A. Exactly.
 6 CHAYTOR, Q.C.:
 7 Q. You weren't condoning that or accepting that
 8 as a valid position, is that what you're
 9 saying?
 10 MR. WISEMAN:
 11 A. It's a statement of fact of what Eastern
 12 Health had shared with me.
 13 CHAYTOR, Q.C.:
 14 Q. Had relayed to you?
 15 MR. WISEMAN:
 16 A. It was not my personal opinion, nor was it the
 17 opinion of Government.
 18 CHAYTOR, Q.C.:
 19 Q. And is it your personal opinion? Is it your
 20 personal opinion?
 21 MR. WISEMAN:
 22 A. No, it is not.
 23 CHAYTOR, Q.C.:
 24 Q. And I take it, it's not the position of the
 25 Government?

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1 MR. WISEMAN:
 2 A. No, it's not.
 3 CHAYTOR, Q.C.:
 4 Q. Mr. Wiseman, then you continue on in answering
 5 that question, and I don't think the answer
 6 necessarily addresses -- or at the beginning,
 7 anyhow, you're giving a background, I think
 8 here, and you're talking about the numbers,
 9 and you referred to the 700 and some odd tests
 10 that had been provided for at the Health
 11 Sciences Centre, "They sent them out to Mount
 12 Sinai for a recheck. Of those that they sent
 13 out there were 317, I believe is the exact
 14 number, that came back and suggested that the
 15 test results down at the Health Sciences were
 16 very different than those that were gotten
 17 from Mount Sinai at that particular time. Of
 18 those 300 and some odd, an expert panel
 19 reviewed the files, reviewed the cases and
 20 reviewed the test results and suggested that
 21 117 of those patients needed a change in the
 22 course of their treatment, and all of those
 23 patients had their changes made. The remaining
 24 200 patients were contacted through their
 25 family physicians". So that's what you

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1 understood, the remaining -- at this point in
 2 time the remaining 200 had been contacted
 3 through their family physicians?
 4 MR. WISEMAN:
 5 A. That was the information I had gotten from
 6 Eastern Health.
 7 CHAYTOR, Q.C.:
 8 Q. That's what Eastern Health told you. Who at
 9 Eastern Health told you that?
 10 MR. WISEMAN:
 11 A. This would have been -- if you recall
 12 yesterday's discussion, I said we had
 13 officials in from Eastern Health on the 15th,
 14 and we had a discussion then around, you know,
 15 the issue around what's happening, what we had
 16 before us, and some reconciliation of the
 17 statements that were in the media and to help
 18 inform me, you know, of what had actually
 19 taken place here.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. So that was your meeting on the 15th?
 22 MR. WISEMAN:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. You didn't have another meeting before you

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1 went to the House on the 16th with Eastern
 2 Health?
 3 MR. WISEMAN:
 4 A. There would -- I don't recall having Eastern
 5 Health in on the 16th, but that would have --
 6 this reconciliation of the numbers and gaining
 7 some insight would have come from that
 8 discussion on the 15th.
 9 CHAYTOR, Q.C.:
 10 Q. So you understood from what Mr. Tilley told
 11 you, the 200 other patients who weren't
 12 requiring a change in treatment, and whether
 13 or not now today that's the real number or not
 14 is an issue for discussion, but at that point
 15 in time the 200 you understood had been
 16 communicated with through their family
 17 physicians?
 18 MR. WISEMAN:
 19 A. That's what I understood, yes.
 20 CHAYTOR, Q.C.:
 21 Q. And did you ask Eastern Health if they had any
 22 records to confirm that?
 23 MR. WISEMAN:
 24 A. I didn't ask at that time if you can actually
 25 show me the documentation. I didn't frame

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1 that question, no.
 2 CHAYTOR, Q.C.:
 3 Q. But you accepted that on face value?
 4 MR. WISEMAN:
 5 A. I did, yes.
 6 CHAYTOR, Q.C.:
 7 Q. And repeated it in the House?
 8 MR. WISEMAN:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. You continued on now, Mr. Wiseman, and you
 12 say, "the 200 remaining patients", so those
 13 200 that didn't require change in treatment,
 14 "the 200 remaining patients were advised
 15 through their family physicians that their
 16 test results were, in fact, a false negative
 17 and they were advised the results of the new
 18 test that were completed", and then you go on
 19 to say, "At no time were those 200 women at
 20 any risk. The risks were associated with the
 21 117 who had their treatment regimes changed".
 22 Now, Mr. Wiseman, I don't see that in your
 23 briefing note that the other 200 women were
 24 not at any risk, at any risk, at no time were
 25 those women at any risk. That's not in your

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1 briefing note?
 2 MR. WISEMAN:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. Who told you that?
 6 MR. WISEMAN:
 7 A. As I said to you earlier, the briefing note,
 8 together with the conversations we would have
 9 in the briefings themselves, would help form
 10 what I would say in public. So the briefing
 11 note is not intended to be an all encompassing
 12 piece of information. This would have come
 13 about as a result of discussions that would
 14 have taken place, either on the 15th or the
 15 follow-up discussion we would have had on the
 16 16th, because then on the 16th, I also would
 17 have had discussions with officials in the
 18 department around this issue and around the
 19 numbers and what impacts that might have had
 20 on, you know, what people were impacted, what
 21 it meant to have a change in your treatment,
 22 those sorts of discussions as a part of my
 23 gaining an understanding. That would have
 24 come out during that discussion.
 25 CHAYTOR, Q.C.:

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1 Q. So Eastern Health or your officials in your
 2 department, told you that at no time were
 3 those 200 women at any risk?
 4 MR. WISEMAN:
 5 A. That would be the understanding I had at that
 6 time.
 7 CHAYTOR, Q.C.:
 8 Q. Based on the information they gave you?
 9 MR. WISEMAN:
 10 A. At that time.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And whether or not any of those 200 did
 13 not require a treatment change because their
 14 cancer had already metastasized and they were
 15 already receiving treatment because of the
 16 metastasises, you didn't know that?
 17 MR. WISEMAN:
 18 A. I didn't know that.
 19 CHAYTOR, Q.C.:
 20 Q. And in fact, those women could very well have
 21 been at great risk.
 22 MR. WISEMAN:
 23 A. You're absolutely right.
 24 THE COMMISSIONER:
 25 Q. Or men.

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1 CHAYTOR, Q.C.:
 2 Q. Or men, sorry. Yes, men too. Okay, Mr.
 3 Wiseman, anything else happen then on the 16th
 4 with respect to this issue? You came out of
 5 the House, did you have any further meetings
 6 or discussions on the issue?
 7 MR. WISEMAN:
 8 A. After the House was closed, I would suspect, I
 9 don't recall exactly, but I suspect that the
 10 fact that we were going to have a discussion
 11 the next day in Cabinet around this issue, I
 12 would have no doubt had a discussion with my
 13 Deputy at that time about, you know, in terms
 14 of the information to be presented to Cabinet
 15 and the, I guess a broader discussion about
 16 anything that was new that may have surfaced
 17 that day that he needed to bring me up to
 18 speed on. So I suspect that I would have had
 19 that kind of a discussion with the Deputy
 20 after the House closed.
 21 CHAYTOR, Q.C.:
 22 Q. And so the decision had already been made, you
 23 told us yesterday, to do a Cabinet briefing
 24 and the briefing is now going to take place
 25 the next day, May 17th.

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1 MR. WISEMAN:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. What work goes into that then? You met with
 5 your Deputy to discuss what needs to happen.
 6 Was the decision made as to who would present
 7 to Cabinet?
 8 MR. WISEMAN:
 9 A. That would have been the Deputy, yes.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, so John Abbott is going to do the
 12 presentation to Cabinet.
 13 MR. WISEMAN:
 14 A. Yeah.
 15 CHAYTOR, Q.C.:
 16 Q. And would that be the norm? Is that what
 17 normally happens?
 18 MR. WISEMAN:
 19 A. If it's a--it's a combination of both.
 20 Sometimes a Minister will make a presentation
 21 to Cabinet and supported by officials, and
 22 sometimes if it's a--more of a technical kind
 23 of a briefing with more detail, that required
 24 some analysis that had already been done by
 25 officials, then officials would quite possibly

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1 make that presentation.
 2 CHAYTOR, Q.C.:
 3 Q. And Mr. Wiseman, were you involved in the
 4 preparation yourself or did you leave that to
 5 Mr. Abbott?
 6 MR. WISEMAN:
 7 A. Not the detail of the preparation but John and
 8 I would have had some discussion around, you
 9 know, what might be in that briefing which was
 10 to be a fairly comprehensive briefing to make
 11 sure that, you know, we dealt with all the
 12 communication around this piece, how
 13 information was flowing into the department,
 14 what information we knew to be factual with
 15 respect to the numbers of people impacted
 16 here. And so as much information as we had
 17 available to us in the department with respect
 18 to the people tested, the issues around
 19 Eastern Health and the communication that had
 20 already existed between ourselves and Eastern
 21 Health on the issue. I wanted to make sure
 22 that was all included in the presentation, but
 23 I wouldn't have been involved in actually
 24 developing it.
 25 CHAYTOR, Q.C.:

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1 Q. So the purpose was to have the Cabinet
 2 informed to the same level that you were now
 3 on this issue?
 4 MR. WISEMAN:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And why? What was the need at that particular
 8 point in time?
 9 MR. WISEMAN:
 10 A. In my view, this was an issue that--I mean, as
 11 I said to you yesterday, you know, I had only
 12 been seized with this issue for a very short
 13 period of time and I had a real uncomfortable
 14 feeling for a number of reasons. One, we had
 15 some issues around disclosure that I had
 16 disagreed with. This was impacting a large
 17 number of people. This was something that had
 18 had a profound impact on their lives and it
 19 was an issue that was still, obviously, not
 20 being managed right and I wanted to make sure
 21 that, you know, as a government that we needed
 22 to better understand how we would manage this
 23 on a go-forward basis.
 24 CHAYTOR, Q.C.:
 25 Q. So it was your intention at that point in time

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1 to take over management of this issue?
 2 MR. WISEMAN:
 3 A. Not management of the issue in terms of an
 4 operational management, that's the
 5 responsibility of the Health Authority, but
 6 from a government perspective, I wanted to
 7 make sure that, you know, if government needed
 8 to be involved in this, government needed to
 9 inject themselves, government needed to
 10 provide some direction in this, that we needed
 11 to make sure that we, as a Cabinet as a whole,
 12 had as much information as I did to help me
 13 with that kind of a discussion.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. And what time in the day did the
 16 briefing take place?
 17 MR. WISEMAN:
 18 A. Cabinet normally meets around 10:00 in the
 19 morning, so I suspect that was a -
 20 CHAYTOR, Q.C.:
 21 Q. So it would have taken place prior to the
 22 session in the House that afternoon?
 23 MR. WISEMAN:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. Maybe we can look at P-0126 please,
 2 page 23? Thank you. Mr. Wiseman, I don't
 3 know if you have it in your book, but this
 4 what we understand is the PowerPoint
 5 presentation that Mr. Abbott would have made
 6 that day, is that right?
 7 MR. WISEMAN:
 8 A. Uh-hm.
 9 CHAYTOR, Q.C.:
 10 Q. And so there was a PowerPoint presentation.
 11 Were there other documents passed out?
 12 MR. WISEMAN:
 13 A. This would have been what would have been
 14 passed out in Cabinet, yes.
 15 CHAYTOR, Q.C.:
 16 Q. This is it, okay. And I notice in here that
 17 there's reference to various briefing notes.
 18 Would the briefing notes have been provided to
 19 the people in attendance?
 20 MR. WISEMAN:
 21 A. I doubt very much, I couldn't say with
 22 confidence, but I doubt very much if they
 23 would have been.
 24 CHAYTOR, Q.C.:
 25 Q. Do you recall any briefing notes, copies of

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1 the briefing notes being in the room at all?
 2 MR. WISEMAN:
 3 A. I suspect that--I don't recall it and in the
 4 normal course of making presentations, what
 5 you're seeing here is a presentation deck, and
 6 that deck would be distributed to Cabinet and
 7 the person making the presentation would then
 8 walk us through the information.
 9 CHAYTOR, Q.C.:
 10 Q. So you don't recall any other paper being in
 11 the room?
 12 MR. WISEMAN:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. No paper on the table and a PowerPoint
 16 presentation. I take it Mr. Abbott would have
 17 had speaking notes?
 18 MR. WISEMAN:
 19 A. He would have, yes, I think.
 20 CHAYTOR, Q.C.:
 21 Q. So who spoke? Did you give a preamble or how
 22 did it happen?
 23 MR. WISEMAN:
 24 A. I would have introduced the issue and then
 25 passed it over to Mr. Abbott for his

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1 presentation.
 2 CHAYTOR, Q.C.:
 3 Q. And do you recall what you said?
 4 MR. WISEMAN:
 5 A. It would have probably--I don't recall
 6 exactly, but given the--the content of it
 7 would have been in here, I would have maybe
 8 only had a very brief few comments as to what
 9 we were trying to achieve by having this
 10 detailed presentation.
 11 CHAYTOR, Q.C.:
 12 Q. And what was it that you were trying to
 13 achieve? To bring your Cabinet colleagues up
 14 to speed, is that it?
 15 MR. WISEMAN:
 16 A. To make sure everybody around the table had
 17 the same insight that I had on this issue.
 18 CHAYTOR, Q.C.:
 19 Q. Were you looking for anything else to come out
 20 of this?
 21 MR. WISEMAN:
 22 A. I mean obviously we needed to have a
 23 discussion around where we, as a government,
 24 what would be our role and what would be any
 25 action government would take after we've all

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1 had this kind of presentation, all had this
 2 insight.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, so if we scroll down through this, it's
 5 indicated to be a briefing for Cabinet, May
 6 17th, 2007 "Confidential", so I take it this
 7 wouldn't go beyond the Cabinet, is that right?
 8 MR. WISEMAN:
 9 A. That's right.
 10 CHAYTOR, Q.C.:
 11 Q. And there's an outline given, the background,
 12 what the department knew and when. Why would
 13 that have been important for your Cabinet
 14 colleagues to know?
 15 MR. WISEMAN:
 16 A. Well I think it's important that, you know,
 17 government is going to have a discussion
 18 around the issue at hand and government had
 19 already had some knowledge of it prior to this
 20 and it was important that everybody had that
 21 perspective.
 22 CHAYTOR, Q.C.:
 23 Q. Then public communications issues. And what
 24 was that about?
 25 MR. WISEMAN:

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1 A. How this information had been communicated to
 2 the public, the issue of disclosure and that
 3 issue.
 4 CHAYTOR, Q.C.:
 5 Q. By whom? By Eastern Health or by Eastern
 6 Health and the government?
 7 MR. WISEMAN:
 8 A. By Eastern Health.
 9 CHAYTOR, Q.C.:
 10 Q. And then quality assurance.
 11 MR. WISEMAN:
 12 A. Uh-hm.
 13 CHAYTOR, Q.C.:
 14 Q. And then the Registrar is going to help us not
 15 have to read sideways. Thank you. So then
 16 the background is "What is ER/PR testing? How
 17 was the problem discovered? Internal review
 18 completed." What did you understand the
 19 internal review to be referring to?
 20 MR. WISEMAN:
 21 A. That was the two internal reviews that we've
 22 been referring to in the briefing notes that
 23 were done by outside agencies.
 24 CHAYTOR, Q.C.:
 25 Q. And would that be the internal review or

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1 external reviews?
 2 MR. WISEMAN:
 3 A. I'm sorry, external reviews.
 4 CHAYTOR, Q.C.:
 5 Q. So what was the internal review?
 6 MR. WISEMAN:
 7 A. I'm not sure, I can't recall that now.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, well let's see if there's any further
 10 elaboration here. You don't recall what was
 11 said about that, do you?
 12 MR. WISEMAN:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. All right, and then the decision is made to
 16 retest all negative ER/PR results from May
 17 1997 to August 2005." And then there's an
 18 outline or a chronology, I guess is the better
 19 word.
 20 MR. WISEMAN:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And then it brings up from February 2006 "The
 24 final test results received from Mount Sinai
 25 for retest of patients". And the next point

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1 in the chronology is February 2007, "Testing
 2 resuming at the Health Sciences." And then we
 3 have the numbers, total cases reviewed,
 4 negative tests sent to Mount Sinai, test
 5 results changed and the number, and then a
 6 little more detail. Again, it's 176 deceased
 7 referred to and 103 of them having been
 8 retested. And then what the department knew
 9 and when. There's reference to the July 20th,
 10 2005 briefing note. Now had you prior to this
 11 Cabinet briefing, had you seen this briefing
 12 note?
 13 MR. WISEMAN:
 14 A. I hadn't read that briefing note, no.
 15 CHAYTOR, Q.C.:
 16 Q. You hadn't read it.
 17 MR. WISEMAN:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and at the--in preparation for the
 21 Cabinet briefing, did you then see it?
 22 MR. WISEMAN:
 23 A. No, I didn't see it.
 24 CHAYTOR, Q.C.:
 25 Q. When did you first see that briefing note?

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1 MR. WISEMAN:
 2 A. I don't know if I had seen it.
 3 CHAYTOR, Q.C.:
 4 Q. To this date?
 5 MR. WISEMAN:
 6 A. To this date.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, now this is the first briefing note, it
 9 came from Eastern Health, was given to
 10 Minister Ottenheimer when he met with Eastern
 11 Health officials on July 21st, 2005. And to
 12 this date, you don't -
 13 MR. WISEMAN:
 14 A. I can't recall reading it. It may have been
 15 something that I would have read as a part of
 16 my review of the file, but I can't confirm for
 17 you today that I read that note at a
 18 particular point in time.
 19 CHAYTOR, Q.C.:
 20 Q. I'm going to suggest to you that it is
 21 something that has come across your desk.
 22 MR. WISEMAN:
 23 A. Okay.
 24 CHAYTOR, Q.C.:
 25 Q. And we'll see that when we deal with a ATIPP

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1 request later on.
 2 MR. PRITCHARD:
 3 Q. Sorry, Commissioner, if this is a key point,
 4 perhaps it should be shown the note.
 5 CHAYTOR, Q.C.:
 6 Q. Well, sure, if you want to show it to him now,
 7 but -
 8 MR. PRITCHARD:
 9 Q. Well just that you asked him if he recalled
 10 seeing it -
 11 CHAYTOR, Q.C.:
 12 Q. If he seen it? Oh, okay, sure, absolutely.
 13 MR. PRITCHARD:
 14 Q. So maybe that would assist the matter.
 15 CHAYTOR, Q.C.:
 16 Q. Now, who remembers that exhibit number?
 17 Thanks Rolf, what's the exhibit number?
 18 MR. PRITCHARD:
 19 Q. No, I just thought it might assist him if he
 20 could see it.
 21 THE COMMISSIONER:
 22 Q. See if we can find it.
 23 MR. SIMMONS:
 24 Q. Try P-0075.
 25 THE COMMISSIONER:

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1 Q. Thank you, Mr. Simmons. I take it we've
 2 learned a lot about (unintelligible) from Mr.
 3 Simmons, either that or he has a great memory
 4 for documents.
 5 MR. SIMMONS:
 6 Q. Not from my memory.
 7 CHAYTOR, Q.C.:
 8 Q. Thank you, Mr. Simmons. Okay, Minister, the
 9 briefing note is now on the screen before you.
 10 MR. WISEMAN:
 11 A. Okay.
 12 CHAYTOR, Q.C.:
 13 Q. So, if you just wanted to take your time and
 14 scroll down through it and then let me know if
 15 it's jogs your memory.
 16 MR. WISEMAN:
 17 A. It does, with the Eastern Health letterhead on
 18 it, yes.
 19 CHAYTOR, Q.C.:
 20 Q. Yes, okay, so you have seen this briefing
 21 note. Okay. When did you first see this
 22 briefing note?
 23 MR. WISEMAN:
 24 A. I can't recall. I may have seen it before the
 25 Cabinet presentation, but I wouldn't want to

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1 confirm with certainty that I did.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So, you may have seen it in preparation
 4 for the briefing, but you're not sure.
 5 MR. WISEMAN:
 6 A. I wouldn't want to confirm that I had, given
 7 the--I'm saying that because of the timeframe
 8 here. This was a--I started having discussion
 9 around this on the 15th and this is now being
 10 presented on the 17th to Cabinet. So, I
 11 wouldn't want to confirm for you that I had
 12 read it within those two days.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, that's fair enough, but the fact that it
 15 has the Eastern Health logo on it is jogging
 16 your memory that you have seen it.
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Is there anything about it then that sticks
 21 out in your mind, why are you remembering that
 22 you've seen this briefing note?
 23 MR. WISEMAN:
 24 A. Just the structure of it and the flow of it
 25 from Eastern Health. I haven't been reading

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1 the content here to suggest that the content
 2 is jogging my memory.
 3 CHAYTOR, Q.C.:
 4 Q. Had you seen it before you came for your
 5 interview with Commission counsel?
 6 MR. WISEMAN:
 7 A. I suspect that I had by that time because this
 8 would have been February.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. So when you saw it, you're not certain
 11 -
 12 MR. WISEMAN:
 13 A. I'm not certain.
 14 CHAYTOR, Q.C.:
 15 Q. - but it does jog your memory that you think
 16 you have seen it.
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. All right. So, we'll go back then
 21 please to P-0126, page 23 and we're just
 22 looking at what the department knew and when.
 23 And we just spoke about the July 20th, 2005
 24 briefing note and that, in fact, Mr.
 25 Ottenheimer was briefed on July 21. Was that

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1 news to you during the Cabinet briefing or had
 2 you already received -
 3 MR. WISEMAN:
 4 A. I knew that.
 5 CHAYTOR, Q.C.:
 6 Q. You knew this chronology?
 7 MR. WISEMAN:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And you received this chronology, I take it,
 11 from your officials in the couple of days
 12 preceding?
 13 MR. WISEMAN:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. So, was any of this information new to
 17 you?
 18 MR. WISEMAN:
 19 A. No, I mean, as we went--the two days prior to
 20 this--the dates I may not have necessarily
 21 have been, you know, fixed on the dates as we
 22 presented through the Cabinet process, but the
 23 notion that these meetings occurred, I had
 24 some knowledge of.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And you had not been provided--though
 2 we see a number of briefing notes listed here,
 3 you had not been provided, however, with
 4 copies of all the old briefing notes.
 5 MR. WISEMAN:
 6 A. Up to that particular point, no.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. And we see a briefing note indicated
 9 here prepared for Cabinet Secretariat for
 10 information August 18, 2006. Had you seen
 11 that briefing at this point in time?
 12 MR. WISEMAN:
 13 A. No, I hadn't.
 14 CHAYTOR, Q.C.:
 15 Q. Have you seen that briefing note since?
 16 MR. WISEMAN:
 17 A. I don't think I've read--I've seen the note,
 18 but don't think I've read it in detail.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. Was there any discussion at the Cabinet
 21 briefing surrounding that briefing note?
 22 MR. WISEMAN:
 23 A. Not that I can recall specifically around that
 24 note, no.
 25 CHAYTOR, Q.C.:

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1 Q. So Mr. Osborne didn't raise in Cabinet whether
 2 or not he had seen that briefing note or not.
 3 MR. WISEMAN:
 4 A. He had--yes, on that particular point, he did.
 5 He raised it with the Premier, yes.
 6 CHAYTOR, Q.C.:
 7 Q. Raised it after the briefing, was it?
 8 MR. WISEMAN:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. It wasn't brought up in the group.
 12 MR. WISEMAN:
 13 A. He raised it after the meeting, yeah.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. And when did you become aware of that
 16 being an issue?
 17 MR. WISEMAN:
 18 A. At that moment.
 19 CHAYTOR, Q.C.:
 20 Q. At that moment when he spoke to the Premier?
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. You were present for that?
 25 MR. WISEMAN:

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1 A. I was in the room, yes.
 2 CHAYTOR, Q.C.:
 3 Q. You were in the room, okay. And what did you
 4 take from that discussion? What happened?
 5 MR. WISEMAN:
 6 A. I wasn't a part of the discussion, but I -
 7 CHAYTOR, Q.C.:
 8 Q. You were an observer to it.
 9 MR. WISEMAN:
 10 A. Yeah, well--and I saw the--Minister Osborne--
 11 Minister Osborne had mentioned to the Premier
 12 that he hadn't seen the note, and then him and
 13 the Premier had a discussion but I wasn't a
 14 part of the discussion.
 15 CHAYTOR, Q.C.:
 16 Q. Who else was in the room?
 17 MR. WISEMAN:
 18 A. I'm not certain. It was after the Cabinet
 19 meeting was over. Some may have left and some
 20 of us may still be there picking up our
 21 things.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. And were you concerned by that that
 24 your predecessor was stating that he had not
 25 received a briefing note, which obviously

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<p>1 pertinent to matters within his department? 2 Did that cause you concern? 3 MR. WISEMAN: 4 A. Obviously, as the Minister of that department 5 then and now, you know, I wouldn't want the 6 officials in my department to feel that it was 7 okay to provide briefing notes to anyone 8 outside of the department that hadn't 9 obviously come through me. 10 CHAYTOR, Q.C.: 11 Q. And did you follow that up with any of your 12 officials? 13 MR. WISEMAN: 14 A. I did. 15 CHAYTOR, Q.C.: 16 Q. Okay. And who did you speak with? 17 MR. WISEMAN: 18 A. The Deputy. 19 CHAYTOR, Q.C.: 20 Q. Mr. Abbott. 21 MR. WISEMAN: 22 A. Uh-hm. 23 CHAYTOR, Q.C.: 24 Q. Anyone else? 25 MR. WISEMAN:</p>	<p>1 certain fashion, and so there was no real 2 discussion around it. 3 CHAYTOR, Q.C.: 4 Q. He didn't ask what had happened in the past, 5 how did this happen? 6 MR. WISEMAN: 7 A. I didn't get into that discussion with him. 8 CHAYTOR, Q.C.: 9 Q. But you made it clear to him it wasn't to 10 happen to you? 11 MR. WISEMAN: 12 A. Exactly. 13 CHAYTOR, Q.C.: 14 Q. And did it, did it ever happen to you, to your 15 knowledge? 16 MR. WISEMAN: 17 A. To my knowledge, it hasn't. 18 CHAYTOR, Q.C.: 19 Q. And then the next -- so after the chronology 20 and what the Department knew and when, the 21 next chronology -- sorry, and this indicates 22 actually that you were briefed by Eastern 23 Health on May 15th. 24 MR. WISEMAN: 25 A. Uh-hm.</p>
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<p>1 A. I don't recall mentioning it to anyone else, 2 but I want to make it clear that, you know, 3 in--briefing notes coming out of the 4 department would need to be--if I wasn't 5 available to--sometimes, you know, Cabinet 6 Secretariat or the Premier's office, you know, 7 may want some information fairly quickly and I 8 may not be available or may be out of town, 9 and for those exceptions, obviously, you know-- 10 --but ensured after that I would be, you know, 11 given a copy of the briefing note upon my 12 return to my office. 13 CHAYTOR, Q.C.: 14 Q. Okay. And what did Mr. Abbott have to say to 15 that? Did he take any issue with that? 16 MR. WISEMAN: 17 A. No, no. No, not at all. 18 CHAYTOR, Q.C.: 19 Q. And did he explain to you how the briefing 20 note had managed to go to Cabinet Secretariat? 21 MR. WISEMAN: 22 A. I don't recall him and I having a lengthy 23 discussion around it. It was a--you know, it 24 was a commentary that I had made about my 25 desire to have briefing notes handled in a</p>	<p>1 CHAYTOR, Q.C.: 2 Q. Updated briefing note, same date, and then an 3 updated briefing note on the 16th. No 4 indication that you were briefed by Eastern 5 Health on the 16th, unless it happened after 6 this. Well, no, this is the 17th. So it 7 appears according to this, you weren't given a 8 further briefing by Eastern Health on the 9 16th. Then under public communications 10 issues, it indicates that the issue was first 11 reported in the Independent, October, 2005, 12 and it indicates Statement of Claim in 13 December, 2005. Now in terms of the public 14 communications, why is there reference to a 15 Statement of Claim being filed in December of 16 2005? 17 MR. WISEMAN: 18 A. I wouldn't -- I'd only speculate if I offered 19 up -- a statement of claim would be, I guess, 20 a court affidavit is a public document, so, 21 therefore, there's something in the public 22 domain, but beyond that I wouldn't want to try 23 to comment as to why it would be there in this 24 heading. 25 CHAYTOR, Q.C.:</p>

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1 Q. Do you recall when you're either meeting with
 2 Mr. Abbott in preparation for the Cabinet
 3 briefing or during the Cabinet briefing, Mr.
 4 Abbott explaining why he would need to put in
 5 the fact that a Statement of Claim had been,
 6 he says, filed or issued in December, 2005?
 7 MR. WISEMAN:
 8 A. I don't recall having that discussion.
 9 CHAYTOR, Q.C.:
 10 Q. And no recollection as to what he told Cabinet
 11 about it?
 12 MR. WISEMAN:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. Then it goes on, of course, to talk about
 16 further details unveiled in the court
 17 affidavit, and quality assurance, a list of
 18 quality assurance control measures that have
 19 been implemented, the dedicated lab, and again
 20 we see the reference to a Centre of
 21 Excellence, the fact that they're seeking
 22 national accreditation for the lab, ensuring
 23 all pathologists and technologists receive
 24 special training, random samples sent to Mount
 25 Sinai as a quality control check, and I take

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1 it those are the list of measures that were
 2 articulated to you by Mr. Tilley?
 3 MR. WISEMAN:
 4 A. Uh-hm.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. Let's go back for a moment, Registrar.
 7 Just a moment, please, Mr. Wiseman, we're
 8 having a little technical difficulty.
 9 MR. WISEMAN:
 10 A. While you're doing that, I'll get some more
 11 water.
 12 CHAYTOR, Q.C.:
 13 Q. Absolutely, help yourself. I'm just going to
 14 scroll back here to page 26. In terms of the
 15 background, I had asked you about the internal
 16 review and what you understood from that, and
 17 you didn't recall what was said. There is
 18 reference to the external reviews as well,
 19 September, 2005, external reviews conducted.
 20 MR. WISEMAN:
 21 A. Uh-hm.
 22 CHAYTOR, Q.C.:
 23 Q. Do you recall what was told to the Cabinet by
 24 Mr. Abbott about the external reviews?
 25 MR. WISEMAN:

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1 A. No, I don't, no.
 2 CHAYTOR, Q.C.:
 3 Q. You don't?
 4 MR. WISEMAN:
 5 A. No. I gathered, you know, and I didn't at the
 6 time -- I don't recall now, but I remember you
 7 -- in the last discussion, you had a copy of
 8 Mr. Abbott's dec (phonetic) and I think
 9 there's a reference on that deck to, you know,
 10 the privacy piece.
 11 CHAYTOR, Q.C.:
 12 Q. The Evidence Act?
 13 MR. WISEMAN:
 14 A. The Evidence Act, and the information was --
 15 had to be -- wasn't able to be released, but I
 16 don't recall the sharing of that in the
 17 briefing itself.
 18 CHAYTOR, Q.C.:
 19 Q. You don't recall him saying that to the
 20 Cabinet in the brief?
 21 MR. WISEMAN:
 22 A. I don't recall having, no, a lengthy
 23 discussion in Cabinet around that piece, no.
 24 CHAYTOR, Q.C.:
 25 Q. Do you recall then did any of your colleagues

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1 ask the outcome of the reviews or whether or
 2 not you knew what the outcome of the reviews -
 3 - whether or not you knew the outcome?
 4 MR. WISEMAN:
 5 A. I don't recall specifically the discussion
 6 around the outcomes or an examination or a
 7 lengthy discussion around the nature of the
 8 reviews and what might have been in them. The
 9 notion that the recommendations coming from
 10 them had been implemented, I suspect was
 11 shared.
 12 CHAYTOR, Q.C.:
 13 Q. So you recall that being shared?
 14 MR. WISEMAN:
 15 A. I suspect -- I mean, my recollection of the
 16 detail as you go through, you know -- the
 17 number of slides like this here, to be able to
 18 recall the nature of the conversation around
 19 each of these, but I suspect that the external
 20 review piece, the part that we would have been
 21 talking about at this particular point would
 22 have been the fact that the recommendations
 23 had been implemented.
 24 CHAYTOR, Q.C.:
 25 Q. And I appreciate -- like, I'm not asking you

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1 specifically with respect to any slides. What
 2 I'm saying to you is this was an issue of
 3 significance importance to you.
 4 MR. WISEMAN:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. That you called your colleagues together on
 8 this.
 9 MR. WISEMAN:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Is that the first time you had done that? Is
 13 that the first time you had asked for a
 14 Cabinet briefing on an issue as the Minister
 15 of Health?
 16 MR. WISEMAN:
 17 A. There may have been some issues in the
 18 budgetary process that were -- policy issues
 19 that we had made presentations to Cabinet on.
 20 In fact, there were a couple that I recall as
 21 part of the budget. So this wasn't the very
 22 first time the Department of Health was making
 23 a presentation --
 24 CHAYTOR, Q.C.:
 25 Q. Presentation to Cabinet.

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1 MR. WISEMAN:
 2 A. Presentation to Cabinet in --
 3 CHAYTOR, Q.C.:
 4 Q. But the first time on an issue --
 5 MR. WISEMAN:
 6 A. Issue such as this, yes.
 7 CHAYTOR, Q.C.:
 8 Q. And I'm just asking your recollections on what
 9 happened.
 10 MR. WISEMAN:
 11 A. The external review conversation was much --
 12 as I recall it at least, we talked about the
 13 recommendations that had been implemented and
 14 there wouldn't have been a lengthy discussion
 15 around trying to explore how we might get the
 16 reports, you know, shared publicly or get
 17 access to them themselves. It was a -- you
 18 know, Mr. Abbott might have made a comment
 19 around the fact that they were protected and
 20 that they're part of a peer review process and
 21 then went on to talk about the recommendations
 22 that would have been implemented.
 23 CHAYTOR, Q.C.:
 24 Q. But you don't know whether or not he said that
 25 or not?

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1 MR. WISEMAN:
 2 A. No, I just -- I mean, that would have been the
 3 gist of what the message would have been.
 4 CHAYTOR, Q.C.:
 5 Q. Did anyone ask or did anyone challenge that,
 6 did anyone say, well, what does the Department
 7 of Justice say about that?
 8 MR. WISEMAN:
 9 A. There wasn't a lengthy discussion around the
 10 external review. A lot of these --
 11 CHAYTOR, Q.C.:
 12 Q. Do you recall anyone asking the question?
 13 MR. WISEMAN:
 14 A. I don't recall the question being posed
 15 directly like that, no.
 16 CHAYTOR, Q.C.:
 17 Q. Do you recall anyone asking what were the
 18 findings, what happened here, how did this
 19 happen?
 20 MR. WISEMAN:
 21 A. The question around what happened here and how
 22 could it have happened, and those sorts of
 23 questions came up, but I don't know -- I
 24 wouldn't want to tell you that they came up in
 25 the context of talking about the external

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1 reviews, but they did come up in the
 2 discussion around the table around the issue
 3 itself.
 4 CHAYTOR, Q.C.:
 5 Q. People asking what happened, how did this
 6 occur.
 7 MR. WISEMAN:
 8 A. Yeah, what happened here and -- so I don't
 9 know if it would have come up in the context
 10 of this particular bullet.
 11 CHAYTOR, Q.C.:
 12 Q. And what were they told, what was the answer
 13 to how this occurred?
 14 MR. WISEMAN:
 15 A. Well, there was no definitive answer. I mean,
 16 at that presentation there was -- there was
 17 references about, you know, there was a notion
 18 that the technology had changed and there was,
 19 you know, some issues around the quality
 20 control programs that were in place, but again
 21 they were -- Mr. Abbott wasn't presenting an
 22 answer to Cabinet that this is exactly what
 23 took place here because he wasn't -- he didn't
 24 have that answer himself, and he was -- he may
 25 have thrown out some possible things that may

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1 need to be questioned here, obviously, you
 2 know, was this an issue of technology, was
 3 this an issue of staff training, was this an
 4 issue of quality control, was this an issue of
 5 poor management, you know, but they were not
 6 thrown out as being statements of fact as to
 7 what actually went wrong here because we
 8 definitely knew it was more, you know, the
 9 range of things that could have had an impact
 10 that caused this to happen.
 11 CHAYTOR, Q.C.:
 12 Q. Mr. Wiseman, who was in the room? I'm not
 13 saying name every person who was in the room,
 14 but Mr. Abbott was there --
 15 MR. WISEMAN:
 16 A. Cabinet would have been there.
 17 CHAYTOR, Q.C.:
 18 Q. The Cabinet. You're there, obviously. The
 19 Premier?
 20 MR. WISEMAN:
 21 A. The Premier.
 22 CHAYTOR, Q.C.:
 23 Q. Was there anyone else, any other staff?
 24 MR. WISEMAN:
 25 A. Premier's Chief of Staff, and the Premier's

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1 Director of Communications.
 2 CHAYTOR, Q.C.:
 3 Q. The Premier's Chief of Staff who was?
 4 MR. WISEMAN:
 5 A. Mr. Crawley.
 6 CHAYTOR, Q.C.:
 7 Q. Mr. Crawley.
 8 MR. WISEMAN:
 9 A. And the Premier's Director of Communication.
 10 CHAYTOR, Q.C.:
 11 Q. Who was Elizabeth Matthews.
 12 MR. WISEMAN:
 13 A. Elizabeth Matthews, and there would have been
 14 the Clerk of the Executive Council.
 15 CHAYTOR, Q.C.:
 16 Q. And who's that at that time?
 17 MR. WISEMAN:
 18 A. At that time that would have been Robert
 19 Thompson, and -- I don't -- I don't recall
 20 others being there. There may have been, but
 21 I'm not certain.
 22 CHAYTOR, Q.C.:
 23 Q. Was there anyone there from Eastern Health?
 24 MR. WISEMAN:
 25 A. There wouldn't have been anyone there from

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1 Eastern Health.
 2 CHAYTOR, Q.C.:
 3 Q. Was there anyone there from Eastern Health
 4 waiting outside the door?
 5 MR. WISEMAN:
 6 A. There may have been, but I don't know. I
 7 can't give you a definitive answer, but it
 8 wouldn't be an uncommon thing to have
 9 individuals who -- like in this case here,
 10 someone like Mr. Tilley be available if
 11 Cabinet wanted to have a discussion with him,
 12 that would be possible.
 13 CHAYTOR, Q.C.:
 14 Q. So you don't recall if Mr. Tilley and/or Dr.
 15 Howell were waiting outside the door?
 16 MR. WISEMAN:
 17 A. I can't confirm that for you, no. They may
 18 have been. It's not an uncommon thing to have
 19 them, but I can't confirm that they were or
 20 not.
 21 CHAYTOR, Q.C.:
 22 Q. Had you requested that they be available in
 23 case any questions came up?
 24 MR. WISEMAN:
 25 A. I don't remember. It's not something that I -

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1 - it's quite possible that I did, but I can't
 2 recall if they were there or not.
 3 CHAYTOR, Q.C.:
 4 Q. And we've been told that there was an occasion
 5 when they were called and waited, but didn't
 6 get called into the room.
 7 MR. WISEMAN:
 8 A. And this would have been --
 9 CHAYTOR, Q.C.:
 10 Q. I'm wondering if that jogs your memory, was
 11 this the occasion?
 12 MR. WISEMAN:
 13 A. This would have been the only occasion.
 14 CHAYTOR, Q.C.:
 15 Q. This would have been the only occasion that
 16 would have happened?
 17 MR. WISEMAN:
 18 A. So if that's something that you have knowledge
 19 of, then I wouldn't deny it, but I can't
 20 confirm it for you with a degree of certainty.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So if there were questions, Mr. Tilley
 23 and Mr. Howell were available and could have
 24 answered any questions that otherwise Mr.
 25 Abbott or yourself could not have answered?

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1 MR. WISEMAN:
 2 A. Could have been, yes.
 3 CHAYTOR, Q.C.:
 4 Q. Were a lot of questions asked?
 5 MR. WISEMAN:
 6 A. There was a lot of discussion around -- a lot
 7 of discussion around the implications for the
 8 patients who are affected here, the
 9 implications for, you know, the -- there was a
 10 lot of discussion around the issue of
 11 disclosure and that in the context of patients
 12 not having information that was timely,
 13 information that they could have acted upon, a
 14 lot of discussion around that particular
 15 piece, a lot of discussion around, you know,
 16 trying to get a sense of how could this
 17 happen, and then discussion then towards, you
 18 know, where to from here, what do we do next,
 19 and discussion then around some kind of an
 20 evaluation of review and that was the gist of
 21 it, the nature of it.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and when you and Mr. Abbott were not
 24 able to give a definitive answer to what had
 25 happened, nobody suggested bring Mr. Tilley

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1 into the room?
 2 MR. WISEMAN:
 3 A. Well, I think the sense was that no one had a
 4 definitive answer. You know, we hadn't gotten
 5 a definitive answer from Eastern Health as to
 6 what happened.
 7 CHAYTOR, Q.C.:
 8 Q. But nobody asked him to come in and explain
 9 that for himself and be available for him to
 10 take the questions?
 11 MR. WISEMAN:
 12 A. No.
 13 CHAYTOR, Q.C.:
 14 Q. Were you provided a copy of the deck notes or
 15 the speaking notes of Mr. Abbott?
 16 MR. WISEMAN:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. You didn't see those in advance?
 20 MR. WISEMAN:
 21 A. No.
 22 CHAYTOR, Q.C.:
 23 Q. If we could have, please, P-0241. Perhaps you
 24 can tell me what came out of this meeting, was
 25 there any directive that came out of this

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1 meeting?
 2 MR. WISEMAN:
 3 A. Well, I think the -- you know, from this,
 4 there was a -- you know, a discussion around,
 5 you know, the whole piece around, you know, an
 6 evaluation of some kind, and there was that
 7 kind of discussion.
 8 CHAYTOR, Q.C.:
 9 Q. I'm sorry, a piece around the evaluation?
 10 MR. WISEMAN:
 11 A. There was a discussion around, you know, how
 12 might -if we were to do some kind of an
 13 evaluation or do some kind of a review, do
 14 some kind of a critique or inquiry of some
 15 kind, then what would be the options for
 16 pursuing that, and there was some direction
 17 provided to start looking at what some options
 18 might be to do that, and what form that might
 19 take, and the second piece was obviously --
 20 not obviously, but there was a piece of
 21 information here that Eastern Health had not
 22 gone out publicly since December and made any
 23 kind of public commentary. Now there was this
 24 new information out there where they had not
 25 been fully disclosing information back in

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1 December, and there was a desire of Cabinet to
 2 ensure that Eastern Health actually now went
 3 out in the public domain and actually provided
 4 some corrections and to provide a complete
 5 picture of the information that they had
 6 available to them.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. Look at P-0241 then, it's only a one
 9 page document and it's a Cabinet Directive,
 10 "The following is a copy of a directive passed
 11 by Cabinet at a meeting held on May 17th,
 12 2007", so I take it this is the meeting?
 13 MR. WISEMAN:
 14 A. Uh-hm.
 15 CHAYTOR, Q.C.:
 16 Q. And it states, "Presentation on estrogen and
 17 progesterone receptors, ER/PR testing, was
 18 received from the Deputy Minister of the
 19 Department of Health and Community Services.
 20 Direction was provided to the Minister of
 21 Health and Community Services to direct
 22 Eastern Health to provide a technical briefing
 23 to media and other interested parties", and
 24 it's signed by the Deputy Clerk of the
 25 Executive Council, Sandra Barnes.

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1 MR. WISEMAN:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. So that's the directive that was given for you
 5 to direct Eastern Health to provide a
 6 technical briefing?
 7 MR. WISEMAN:
 8 A. Uh-hm. Just on that point, I apologize, I --
 9 when you asked who was in the room, I had
 10 forgotten, Sandra Barnes would have been in
 11 that room as well as Deputy Clerk.
 12 CHAYTOR, Q.C.:
 13 Q. She would have been there too?
 14 MR. WISEMAN:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, thank you. Did you understand that you
 18 had the authority, regardless of any Cabinet
 19 Directive, to direct Eastern Health to hold
 20 such a briefing?
 21 MR. WISEMAN:
 22 A. I don't think the -- the Cabinet Directive
 23 wasn't provided necessarily because there was
 24 a concern that as the Minister that they would
 25 not listen to me if I directed them to do it.

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1 You know, it was the Cabinet's desire to have
 2 this done, so they expressed it by way of a
 3 directive, but I -- if I had in my capacity as
 4 the Minister directed Eastern Health to do it,
 5 based on my experience with them, you know, I
 6 don't think they would have objected to that.
 7 CHAYTOR, Q.C.:
 8 Q. So the directive wasn't necessary, you could
 9 have asked Eastern Health to do this?
 10 MR. WISEMAN:
 11 A. I think the Cabinet Directive, you know,
 12 clearly reflects Cabinet as a whole and their
 13 desire to ensure this happened, and that's
 14 what the directive -- you know, reinforces
 15 Cabinet's view that this needed to be done,
 16 and as a result of that -- and this would be
 17 commonplace coming out of Cabinet meetings
 18 that, you know, that there's action required
 19 and Cabinet Directives would actually record
 20 the wish of Cabinet. So this records the wish
 21 of Cabinet, and that's what we're doing here.
 22 CHAYTOR, Q.C.:
 23 Q. Were you reluctant? Did you need a Cabinet
 24 Directive?
 25 MR. WISEMAN:

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1 A. No, no, not at all.
 2 CHAYTOR, Q.C.:
 3 Q. Had you planned or contemplated that you would
 4 do this in any event, and ask Eastern Health
 5 to hold such a briefing?
 6 MR. WISEMAN:
 7 A. The issue around disclosure and how we would
 8 actually now provide greater information is a
 9 topic we had some discussion around. The
 10 issue around, you know, whether I had planned
 11 to give them a directive, and whether I had to
 12 wait for Cabinet, I mean, I hadn't
 13 contemplated in that kind of fashion, hadn't
 14 thought it through as whether I would provide
 15 a directive or whether I would seek Cabinet's
 16 approval to provide a directive. It was a --
 17 this was a sequence of events that was
 18 unfolding that started on Wednesday, or
 19 Tuesday, rather, and now we're into Tuesday
 20 morning and we're having a discussion with
 21 full Cabinet. So the issue around the need to
 22 provide that public disclosure, you know, was
 23 a view shared by many and the whole of Cabinet
 24 endorsed that view.
 25 CHAYTOR, Q.C.:

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1 Q. And was it a view shared by you?
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Because it says direction was provided to you
 6 to do this?
 7 MR. WISEMAN:
 8 A. No, no, no.
 9 CHAYTOR, Q.C.:
 10 Q. You weren't reluctant to do this?
 11 MR. WISEMAN:
 12 A. Not in the least, not in the least.
 13 CHAYTOR, Q.C.:
 14 Q. And this is something you endorsed and wanted
 15 to see happen?
 16 MR. WISEMAN:
 17 A. By all means.
 18 CHAYTOR, Q.C.:
 19 Q. And whether or not the directive was
 20 necessary, you would have had the authority to
 21 ask Eastern Health to do this?
 22 MR. WISEMAN:
 23 A. In issue -- the question around the authority
 24 piece, you know, you asked the question
 25 yesterday as we talked a little bit about the

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1 authority and legislation. I would have felt
 2 comfortable in directing Eastern Health to do
 3 something, the nature of this, and, you know,
 4 as time would unfold, we would find in future
 5 months and future weeks there were other
 6 circumstances where as the Minister, you know,
 7 I provided direction to Eastern Health and
 8 they complied. So I -- clearly, you know,
 9 getting a direction, and I didn't have any
 10 difficulty providing a direction to them.
 11 CHAYTOR, Q.C.:
 12 Q. So why then -- Mr. Wiseman, why was it
 13 necessary on May 17th to give Eastern Health
 14 direction? What was it they weren't doing
 15 that Government felt they should be doing?
 16 MR. WISEMAN:
 17 A. Issue direction, I mean, after we had --
 18 recognizing the previous day or two the
 19 discussion, you know, came about very directly
 20 as a result of the fact that Eastern Health
 21 had made a public commentary in December and
 22 they hadn't provided full information that was
 23 available to them at that time, and, you know,
 24 that was inappropriate, and that now there was
 25 a desire to make that right. So now let's

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1 make it right by providing a more detailed
 2 disclosure and in some sense, I suppose, make
 3 amends for what you had done in December. You
 4 know, the information wasn't provided then, so
 5 now let's make those -- as a health authority,
 6 go public and make a public statement, do a
 7 public briefing, provide public information so
 8 that you -- you needed full disclosure, so
 9 tell the public what you now know.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. This would be a good place, if it's
 12 convenient, Commissioner, to take the morning
 13 break.
 14 THE COMMISSIONER:
 15 Q. Yes, we are at that point. We'll take fifteen
 16 minutes.
 17 (RECESS)
 18 THE COMMISSIONER:
 19 Q. Ms. Chaytor.
 20 CHAYTOR, Q.C.:
 21 Q. Thank you, Commissioner. Mr. Wiseman, when we
 22 broke, we had just spoke about the Cabinet
 23 Directive that came out of a meeting of May
 24 17th, and this was a directive giving you
 25 direction to direct Eastern Health to provide

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1 a technical briefing. Did you do so?
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And who did you speak with at Eastern Health?
 6 MR. WISEMAN:
 7 A. That information would have been communicated
 8 directly to Mr. Tilley through my Deputy.
 9 CHAYTOR, Q.C.:
 10 Q. And was any reluctance expressed by Eastern
 11 Health to do so?
 12 MR. WISEMAN:
 13 A. Not to my knowledge.
 14 CHAYTOR, Q.C.:
 15 Q. The purpose of the directive or the perceived
 16 need for the directive, I understood you to
 17 say that you would not have needed a directive
 18 from Cabinet to do that. Was there any sense
 19 in Cabinet or by yourself that Eastern Health
 20 weren't coming forward or were trying to stay
 21 out of the media at that point in time?
 22 MR. WISEMAN:
 23 A. The -- I'm not sure that there was a belief
 24 that they were trying to avoid the media. The
 25 concern would have been around the disclosure

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1 piece, you know, in terms of the information
 2 that you have making it public, and
 3 withholding the information. So I don't recall
 4 a great discussion around are you concerned
 5 that Eastern Health was trying to avoid the
 6 media. I don't recall that kind of
 7 discussion. The issue of Cabinet Directives,
 8 I think the terminology "directive" would
 9 imply that there's an authority being
 10 exercised as a result of a need to do that
 11 because there's non-compliance of some kind,
 12 but Cabinet -- the process of any decisions
 13 that come out of Cabinet, they're communicated
 14 through a direction like this to a department,
 15 so it wouldn't be uncommon coming out of a
 16 Cabinet meeting that you'd see a Cabinet
 17 Directive which reflects Cabinet's decisions.
 18 So there wasn't a great discussion within
 19 Cabinet, and I can't recall any discussion
 20 around whether or not we needed to have a
 21 Cabinet directive to have this happen or would
 22 the Minister be able to do it without a
 23 Cabinet -- there was no real debate or
 24 discussion around that particular point. So
 25 the Cabinet Directive reflects, you know, a

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1 record of Cabinet's decision and direction
 2 that they provided to me.
 3 CHAYTOR, Q.C.:
 4 Q. Yes. Now around this time, of course, there
 5 was a lot of attention to this issue in the
 6 media, and was Eastern Health speaking out
 7 otherwise? Do you recall were they in the
 8 media on May 15th, May 16th, May 17th?
 9 MR. WISEMAN:
 10 A. I can't recall. I -- I think not.
 11 CHAYTOR, Q.C.:
 12 Q. Was there a concern that without this
 13 direction, they may not be prepared to come
 14 forward?
 15 MR. WISEMAN:
 16 A. I don't recall it having been a topic of
 17 discussion, actually. You know, the -- there
 18 was no real discussion around whether Eastern
 19 Health would not do this, or that they would
 20 not do it voluntarily or would not do it if
 21 asked to do it. That didn't -- that wasn't
 22 the real focus of the discussion.
 23 CHAYTOR, Q.C.:
 24 Q. Okay.
 25 MR. WISEMAN:

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1 A. It kind of was a natural flow from the
 2 presentation we had just had and discussion
 3 that we had just had, you know, that Eastern
 4 Health needs to get out and do a -- make
 5 public the information that they have, they
 6 need to come clean, and make sure that the
 7 information that they have is now in the
 8 public domain. So it came out of -- it was a
 9 natural flow from the presentation and
 10 discussion we just had.
 11 CHAYTOR, Q.C.:
 12 Q. So had Eastern Health expressed to you or
 13 anyone in your Department that they were
 14 reluctant to speak to the media at that point
 15 in time for any reason, whether it was because
 16 the matter was before the courts, or whatever
 17 reason? Had anything like that been
 18 expressed?
 19 MR. WISEMAN:
 20 A. They hadn't shared it with me. If they shared
 21 it with officials, the officials didn't pass
 22 on that kind of a commentary by Eastern
 23 Health.
 24 CHAYTOR, Q.C.:
 25 Q. So that wasn't an issue, to your knowledge?

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1 MR. WISEMAN:
 2 A. To my knowledge, it wasn't an issue.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. So before we leave the 17th, though,
 5 the Cabinet meeting ends. What happened after
 6 that? Was there any further meetings or
 7 discussions around the ER/PR issue?
 8 MR. WISEMAN:
 9 A. I would -- normally Cabinet would meet until
 10 well into midday. The House of Assembly opens
 11 at 1:30. Going back to the Department, I
 12 probably would have had a brief discussion
 13 around the House, which would have included
 14 any current information or anything new that
 15 would have arisen with respect to ER/PR,
 16 together with any other issue that might have
 17 been important to have a discussion about
 18 before going into the house.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. You have an updated briefing note again
 21 on May 17th. So you had two on the 16th and
 22 again on the 17th. I believe that's P-0126,
 23 Registrar, page 40. Actually, this is an e-
 24 mail and it's an e-mail from Tansy Mundon,
 25 your Director of Communications, to Susan

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1 Bonnell, May 18th, 2007, subject; briefing
 2 note. If we could just scroll down then,
 3 please, to page 41. This is the briefing
 4 note. Is that -- is that normal, why would
 5 Tansy Mundon be sending your briefing note or
 6 a briefing note to Susan Bonnell, the Director
 7 of Communications, Eastern Health, or did you
 8 know that had happened?
 9 MR. WISEMAN:
 10 A. I wouldn't have been -- it's not a natural or
 11 normal thing to do, and I don't know why it
 12 happened that day.
 13 CHAYTOR, Q.C.:
 14 Q. So it's not normal that your briefing notes
 15 would be forwarded to Eastern Health?
 16 MR. WISEMAN:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. And you didn't know that this had happened?
 20 MR. WISEMAN:
 21 A. No, it's not something that I would have been
 22 aware of, no.
 23 CHAYTOR, Q.C.:
 24 Q. Does it cause you any concern that it would
 25 happen?

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1 MR. WISEMAN:
 2 A. If there was some -- as a matter of course, it
 3 wouldn't. If there was some information in a
 4 briefing note that's kind of either technical
 5 or there's a lot of data being provided or
 6 some kind of detailed information such as
 7 that, and there's a -- you know, someone wants
 8 to ensure that it hasn't been miscommunicated
 9 and they are a clear reflection of facts, I
 10 wouldn't have any difficulty if someone wanted
 11 to share what was now about to be shared with
 12 me or some others to verify the information as
 13 being statements or factual, but I -- that's
 14 in response to your question, do I have
 15 concern, but whether --
 16 CHAYTOR, Q.C.:
 17 Q. So on May 18th, 2007, to be looking to verify
 18 facts with Eastern Health --
 19 MR. WISEMAN:
 20 A. I'm giving you an answer as to what I -- in
 21 response to your question, do I have concern.
 22 CHAYTOR, Q.C.:
 23 Q. Generally, yes.
 24 MR. WISEMAN:
 25 A. And generally it's not the practise.

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1 CHAYTOR, Q.C.:
 2 Q. What about on this date?
 3 MR. WISEMAN:
 4 A. On this date here, I don't know why this
 5 happened. There obviously must have been a
 6 conversation taking place either between the
 7 two communications people or maybe Mr. Tilley
 8 and Mr. Abbott, I don't know, but this
 9 exchange that you're showing me here now, I
 10 wasn't aware that it happened, nor would I
 11 want to speculate as to why it might have
 12 happened.
 13 CHAYTOR, Q.C.:
 14 Q. And Susan Bonnell, I take it, as Director of
 15 Communications, wouldn't be the person to
 16 verify any information in the briefing note,
 17 in any event?
 18 MR. WISEMAN:
 19 A. Not necessarily, no.
 20 CHAYTOR, Q.C.:
 21 Q. This is drafted again by Beverley Griffiths,
 22 approved by Moira Hennessey, May 17th, 2007,
 23 and it seems to be quite similar, actually, to
 24 one of the two May 16th briefing notes that
 25 we've gone through. There is the reference as

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1 we come down through the second bullet under
 2 your key messages -- it picks up -- actually
 3 under the anticipated questions, it picks up
 4 on the issue of why was Government and Eastern
 5 Health more concerned with the risk of
 6 litigation than patient care, and it mentions
 7 will Government undertake a judicial inquiry.
 8 Then under your key messages, the second one
 9 says, "Absolutely not. There is full
 10 disclosure with patients and their families
 11 once test results become available", and, of
 12 course, we've spoken about that again this
 13 morning at some length. One thing, Minister
 14 Wiseman, that occurs to me, apart from those
 15 who were saying, well, I hadn't been contacted
 16 and hearing you say otherwise, what about
 17 those who had not been contacted and are not
 18 aware that they're part of the retesting at
 19 all up to that point in time, and they're
 20 hearing you say everyone has been contacted,
 21 do you think that may have prevented other
 22 people from coming forward, assuming that
 23 everyone else had been contacted, so anyone
 24 who was part of this group had already been
 25 contacted from what you were saying and

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1 telling the public, so do you think that may
 2 have prevented other patients who we know down
 3 the road are identified and come forward, do
 4 you think that may have prevented some other
 5 people coming forward sooner because they're
 6 hearing that everybody has already been
 7 contacted?
 8 MR. WISEMAN:
 9 A. At the moment when I was making those
 10 statements, I was making them as a result of
 11 being advised by Eastern Health that all
 12 patients who were impacted by the ER/PR
 13 retesting process had been contacted.
 14 CHAYTOR, Q.C.:
 15 Q. Yes.
 16 MR. WISEMAN:
 17 A. In retrospect today, now that I know that not
 18 everybody was contacted, I now recognize that
 19 my statements back then, with the knowledge I
 20 now have, could have had that kind of impact.
 21 CHAYTOR, Q.C.:
 22 Q. Yes, okay. I think if we just scroll down
 23 through, there are some differences, but much
 24 the same content as previously, and then, of
 25 course, all the numbers are there again in

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1 this briefing note. Then if we could go,
 2 please, to P-0105, page -- I'm not sure of my
 3 page, but it's P-0105 and it's May 17th, 2007,
 4 reference to Hansard. Thank you, Registrar.
 5 So you head into the House on May 17th then,
 6 Mr. Wiseman, and this is the Hansard for that
 7 date, and again Mr. Ball has a few questions
 8 for you. In the middle of the page, the first
 9 question that Mr. Ball is posing, "Today we
 10 know we have close to 1000 women who have been
 11 retested for possible testing errors. While
 12 the Minister has indicated that women needing
 13 a change in treatment have been contacted, can
 14 the Minister confirm whether all women have
 15 been retested have been notified, and if so,
 16 does the Minister consider the failure to
 17 communicate this information" -- I'm sorry,
 18 "and if not, does the Minister consider the
 19 failure to communication this information
 20 acceptable". "Mr. Speaker, as I indicated in
 21 the last couple of days in the House, all of
 22 those tests that were repeated and the tests
 23 results came back different than those that
 24 had gotten at the Health Science Centre, all
 25 of those patients have been contacted. All of

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1 the tests that were redone, all of those
 2 individuals have not been contacted because
 3 some of them their test results did not
 4 change. For those whose test results did
 5 change, they have been contacted. 117 of them
 6 had their treatment regime changed. The
 7 remaining patients were contacted through
 8 their family physicians for appropriate
 9 follow-up, I say, Mr. Speaker." So at this
 10 point in time did you understand that not--the
 11 people who did not have test result changes
 12 had not been contacted or you're saying they
 13 weren't contacted directly, they were
 14 contacted through their family physicians?
 15 MR. WISEMAN:
 16 A. Through their family physicians, yes.
 17 CHAYTOR, Q.C.:
 18 Q. So that's what you understood happened?
 19 MR. WISEMAN:
 20 A. Exactly, yes.
 21 CHAYTOR, Q.C.:
 22 Q. So you understood that patients who had a
 23 treatment change, all of those patients had
 24 been directly contacted, the 117 and those
 25 that had no change in treatment were contacted

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1 through their family physicians?
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. That's what you understood?
 6 MR. WISEMAN:
 7 A. That's what I understood.
 8 CHAYTOR, Q.C.:
 9 Q. On May 17th. And again, that information and
 10 understanding came from where?
 11 MR. WISEMAN:
 12 A. It would have come from briefings that I would
 13 have had with officials.
 14 CHAYTOR, Q.C.:
 15 Q. With officials in your Department?
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And with Eastern Health officials?
 20 MR. WISEMAN:
 21 A. As the--there was a continuous kind of
 22 dialogue between officials in the Department
 23 and Eastern Health officials, so information
 24 that--and I wouldn't have had daily, you know,
 25 briefings with officials directly from Eastern

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1 Health, and the--but the information that
 2 would have been relayed to me would have come
 3 from officials in my Department and they in
 4 turn would have gotten that information from
 5 Eastern Health.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. And, Mr. Wiseman, do you know today
 8 whether or not that's an accurate statement?
 9 MR. WISEMAN:
 10 A. I now know today that not all people were
 11 contacted.
 12 CHAYTOR, Q.C.:
 13 Q. And those who had no change in results, do you
 14 know if they were contacted, how they were
 15 contacted?
 16 MR. WISEMAN:
 17 A. The distinction that, as I still--as I
 18 understand today, that some contact with
 19 patients was left to the physician and some
 20 contact was done directly by Eastern Health.
 21 But I understand, as well, that there are
 22 patients who have not been contacted or were
 23 not contacted at the time I made this
 24 statement. There were a number of patients
 25 I've since learned who were not contacted

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1 either by Eastern Health or by their family
 2 physician.
 3 CHAYTOR, Q.C.:
 4 Q. And the contact coming from Eastern Health,
 5 who do you now understand made that contact?
 6 MR. WISEMAN:
 7 A. As I understand the--I can't--I don't know the
 8 names of or titles of the individuals. The
 9 reference that I've been shared has been
 10 Eastern Health themselves have made direct
 11 contact and them versus the family physician
 12 making direct contact. So the title of the
 13 person, I don't--I can't -
 14 CHAYTOR, Q.C.:
 15 Q. A patient relations officer, is that -
 16 MR. WISEMAN:
 17 A. It might be. I don't know the title.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. But you understand today that it's not
 20 correct that all of the other patients had
 21 been contacted through their family physician?
 22 MR. WISEMAN:
 23 A. Any time that I made a statement last year in
 24 that period, you know, from May 15th and the
 25 following two to three weeks that I would have

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1 made public comments about, you know, the
 2 people being contacted would have been
 3 information that I would have gotten from
 4 Eastern Health. I now know that any of those
 5 statements I made during that period about
 6 everybody being contacted, I now know to be
 7 incorrect.
 8 CHAYTOR, Q.C.:
 9 Q. Yes.
 10 MR. WISEMAN:
 11 A. Based on the information that was gathered by
 12 the Centre for Health Information.
 13 CHAYTOR, Q.C.:
 14 Q. And also some of the statements regarding the
 15 manner of contact, as well?
 16 MR. WISEMAN:
 17 A. Yes, yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. Anything else happen then on the 17th
 20 in terms of after you came out of the House,
 21 were there any further meetings or briefings
 22 on this issue?
 23 MR. WISEMAN:
 24 A. There may have been a media scrum again that
 25 day. It happened frequently during this

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1 period so that may have happened. And again,
 2 you know, the Deputy and myself or maybe the
 3 Director of Communications and myself may have
 4 had a conversation around, you know, the
 5 issues that were unfolding, the fact that
 6 Eastern was now going to make the, you know,
 7 the briefing and the discussion around it,
 8 because the briefing was done by Eastern the
 9 following day. And so that would have, you
 10 know, that would have been a part of the
 11 discussion.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So was your Department involved, then,
 14 in preparing for Eastern Health's media
 15 briefing on the 18th?
 16 MR. WISEMAN:
 17 A. The word "involved", I don't think Eastern
 18 Health--the Department would have been
 19 involved in creating the content for that
 20 presentation, that would have been an activity
 21 by Eastern Health. I would expect, and I
 22 expect meaning I believe there was some
 23 discussions between the Deputy and the CEO and
 24 both communications directors around how that
 25 was progressing and what the message was going

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1 to be, what information was going to be
 2 shared.
 3 CHAYTOR, Q.C.:
 4 Q. Did you yourself speak personally to Mr.
 5 Tilley or anybody at Eastern Health about
 6 this?
 7 MR. WISEMAN:
 8 A. About the presentation?
 9 CHAYTOR, Q.C.:
 10 Q. About, yes, in terms of going ahead with the
 11 media briefing on May 18th?
 12 MR. WISEMAN:
 13 A. I can't recall that. I believe it was
 14 communicated directly through Mr. Abbott to
 15 Mr. Tilley.
 16 CHAYTOR, Q.C.:
 17 Q. Now, Mr. Wiseman, we understand that the
 18 normal chain of communication for you would be
 19 at the Board Chair level. Did you contact Ms.
 20 Dawe and speak to her about this?
 21 MR. WISEMAN:
 22 A. Ms. Dawe and I did have some phone
 23 conversations around this issue. Whether it
 24 was at the moment of this particular Cabinet
 25 decision or whether it was sometime after, I

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1 can't really recall. Her and I did have a
 2 couple of conversations with respect to the
 3 issue.
 4 CHAYTOR, Q.C.:
 5 Q. Yes, and I'll get to what conversations you
 6 may have had. I'm just wondering did you--you
 7 now have this Cabinet directive and you've
 8 spoken to Eastern Health or someone on your
 9 behalf has spoken to Eastern Health to tell
 10 them to go ahead with this briefing.
 11 MR. WISEMAN:
 12 A. Um-hm.
 13 CHAYTOR, Q.C.:
 14 Q. And I'm wondering did you contact Ms. Dawe and
 15 let her know that this was happening?
 16 MR. WISEMAN:
 17 A. I can't recall.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And is that something you think you
 20 would recall?
 21 MR. WISEMAN:
 22 A. Not necessarily, no. Because if Eastern
 23 Health--you know, if the Deputy had a
 24 discussion with the CEO about making this
 25 presentation and things were moving along,

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1 then that would have been a natural thing to
 2 happen.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. Did you have any meetings, then, with
 5 Eastern Health officials prior to the briefing
 6 taking place on May 18th?
 7 MR. WISEMAN:
 8 A. With respect to the briefing itself and the
 9 content of the briefing?
 10 CHAYTOR, Q.C.:
 11 Q. Any meetings at all?
 12 MR. WISEMAN:
 13 A. I -
 14 THE COMMISSIONER:
 15 Q. Are we talking about, just to be sure, are we
 16 talking about on that day, the day before?
 17 CHAYTOR, Q.C.:
 18 Q. Yes. So far -
 19 THE COMMISSIONER:
 20 Q. I wasn't sure you said that -
 21 CHAYTOR, Q.C.:
 22 Q. So far he met with them on May 15th.
 23 MR. WISEMAN:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. And I understand there's nothing further then
 2 the next couple of days from what we can see?
 3 MR. WISEMAN:
 4 A. I don't recall having a follow-up meeting with
 5 Eastern Health in the day or so that followed
 6 that. I may have had -
 7 CHAYTOR, Q.C.:
 8 Q. Or discussion with anyone at Eastern Health
 9 about this?
 10 MR. WISEMAN:
 11 A. I may have, but I can't recall specifically,
 12 no.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So the media briefing happens. And did
 15 you attend?
 16 MR. WISEMAN:
 17 A. No, I didn't.
 18 CHAYTOR, Q.C.:
 19 Q. Did any of your officials attend?
 20 MR. WISEMAN:
 21 A. I think there was someone from the
 22 Communications Department in the Department of
 23 Health and Community Services in attendance.
 24 CHAYTOR, Q.C.:
 25 Q. Tansy Mundon?

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1 MR. WISEMAN:
 2 A. I think it might have been her assistant.
 3 CHAYTOR, Q.C.:
 4 Q. Did Mr. Abbott attend?
 5 MR. WISEMAN:
 6 A. I don't think.
 7 CHAYTOR, Q.C.:
 8 Q. So Eastern Health prepare for the--when were
 9 they told, when were they told that they need
 10 to do a media briefing? It's held then very
 11 quickly, the next day?
 12 MR. WISEMAN:
 13 A. Yes, that would have been communicated, you
 14 know, right after the Cabinet meeting.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And you, yourself, weren't involved in
 17 any discussions or meetings leading up to it?
 18 MR. WISEMAN:
 19 A. I can't recall, no.
 20 CHAYTOR, Q.C.:
 21 Q. Okay.
 22 MR. WISEMAN:
 23 A. If it's--because I would have been in the
 24 House during that afternoon and, no, I suspect
 25 not, but I can't recall clearly.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And what happened in that technical

3 briefing? Did you follow it or did you watch

4 it afterwards?

5 MR. WISEMAN:

6 A. No, I wasn't present for it and I didn't--in

7 terms of, you know, follow it, I would have

8 gotten an update as to how it went and what

9 information was shared and the nature of the

10 discussion that followed and the kinds of

11 questions that they would have had to respond

12 to as a result of that. And then the--and,

13 you know, would have had a, you know,

14 discussion with people in the Department

15 around how that actually went and the nature

16 of the response to it.

17 CHAYTOR, Q.C.:

18 Q. And what were you told?

19 MR. WISEMAN:

20 A. And the content. As I understand from that,

21 my recollection of it was that, you know, they

22 were very forthcoming and they were direct

23 with their, you know, answered all the

24 questions that were being posed and that they

25 had provided then a full update on the

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1 information that they now had available to

2 them.

3 CHAYTOR, Q.C.:

4 Q. And we understand that Mr. Tilley also

5 apologized for the confusion that had arisen

6 around this issue.

7 MR. WISEMAN:

8 A. Yes.

9 CHAYTOR, Q.C.:

10 Q. Do you recall that?

11 MR. WISEMAN:

12 A. I do, yes.

13 CHAYTOR, Q.C.:

14 Q. And were you told that?

15 MR. WISEMAN:

16 A. I was.

17 CHAYTOR, Q.C.:

18 Q. That he had done so?

19 MR. WISEMAN:

20 A. Yes.

21 CHAYTOR, Q.C.:

22 Q. Yes. Had you suggested to Mr. Tilley that he

23 should do so?

24 MR. WISEMAN:

25 A. No. I understood before, though, that he was

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1 going to, but I hadn't told him to or

2 suggested he should.

3 CHAYTOR, Q.C.:

4 Q. And who told you that he was planning to do

5 that?

6 MR. WISEMAN:

7 A. I would have gotten that from the Deputy.

8 CHAYTOR, Q.C.:

9 Q. So you gave no direction in that regard

10 whatsoever?

11 MR. WISEMAN:

12 A. No, I did not.

13 CHAYTOR, Q.C.:

14 Q. Okay. Anything else of note on the 18th?

15 MR. WISEMAN:

16 A. Not that I can recall.

17 CHAYTOR, Q.C.:

18 Q. No further meetings take place?

19 MR. WISEMAN:

20 A. There would have been some discussion, but--

21 because keep in mind we were at this

22 particular point having a discussion around

23 the, you know, the nature and the format some

24 kind of a review or inquiry of some format

25 might take, so we would have had some

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1 discussion around things like that. But in

2 terms of a formal meeting, I can't recall one

3 being -

4 CHAYTOR, Q.C.:

5 Q. Okay. And certainly by this point, Mr.

6 Wiseman, by May 17th, 18th, 2007, it appears

7 that the Department has become more actively

8 engaged in this issue, at least certainly from

9 the communication point of view of the issue,

10 is that a fair assessment?

11 MR. WISEMAN:

12 A. That's a fair assessment, yes.

13 CHAYTOR, Q.C.:

14 Q. Okay. And why is that?

15 MR. WISEMAN:

16 A. Well, obviously if we look at the--

17 particularly if you use the March--or not

18 March, I'm sorry, December of '06, you know,

19 as the last reference to any kind of public

20 commentary by Eastern Health and the

21 disclosure, that that was, you know, as I've

22 said before, in my view, should have been

23 different and that I wanted to make sure that,

24 you know, there was a, you know, a clear

25 understanding that, you know, we wanted to, as

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1 a government, that we wanted full disclosure
 2 and that we wanted the information
 3 communicated to patients and that, you know,
 4 from here on in that we needed to be open and
 5 transparent about the process.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. Did you have any comment in the media
 8 on May 18th following the technical briefing,
 9 or on the 19th, May 18th, May 19th, that
 10 period?
 11 MR. WISEMAN:
 12 A. I can't recall. I may have. There was a
 13 period of time, you know, we had four or five
 14 days or a week or ten days of fairly intense
 15 media interest in the story and very frequent
 16 interviews by me, either through a scrum at
 17 the House, after the House of Assembly was
 18 over with a number of media people or
 19 individual media outlets doing individual
 20 interviews, so it's quite possible that I
 21 don't recall.
 22 CHAYTOR, Q.C.:
 23 Q. If we could have P-0207, please? Mr. Wiseman,
 24 this is an e-mail exchange, Tansy Mundon. And
 25 if we scroll down, I think we need to go to

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1 the bottom. It starts at the end of it. It's
 2 actually page 2 that I wanted to look at.
 3 Okay, here we go. Okay. Sorry, having
 4 trouble with the mouse here. Page 2. Thank
 5 you. Okay. Top of the page here. Okay, here
 6 we go. Okay, Mr. Wiseman, sorry about that.
 7 This is an e-mail and it begins at the top.
 8 It's from you to Tansy. And it's May 19th,
 9 2007 and it's "Re: A Globe Story, Newfoundland
 10 to Review Faulty Cancer Testing." But as I
 11 was saying, I think if we scroll down, we'll
 12 get the context of the story that's being
 13 referred to. And you'll see there's an
 14 article special to the Globe and Mail, May
 15 19th, 2007?
 16 MR. WISEMAN:
 17 A. Um-hm.
 18 CHAYTOR, Q.C.:
 19 Q. And then if we come back up, there's an e-mail
 20 from you to Tansy, your Communications
 21 Director, May 19th, 12:05 p.m. re the Globe
 22 story, and it states that, you're referring to
 23 what's quoted in the article, "The part about
 24 I too regret is not accurate. In response to
 25 a question on its government's shoulders, any

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1 responsibility, I indicated government gives
 2 responsibility to the authority and take
 3 guidance from their advice, but ultimately
 4 government is responsibly," and I guess that's
 5 a typo there, "government is responsibly for
 6 the health system. In response to another
 7 question I did indicate that, yes, I agree,
 8 all the information should have been released
 9 in December, however, all patients who had
 10 results changed were contacted." And again, I
 11 don't mean to belabour the point, but the
 12 issue of all the patients who had results
 13 changed were contacted, on May 19th, obviously
 14 you still believed that to be the case?
 15 MR. WISEMAN:
 16 A. As of that date, yes.
 17 CHAYTOR, Q.C.:
 18 Q. You did, yes. One point, though, on that, Mr.
 19 Wiseman, the other thing that factors into
 20 that and when I think about that issue is that
 21 there is this disconnect from what you're
 22 being told by Eastern Health and what you're
 23 hearing patients say and you're also aware
 24 that Eastern Health has some challenges with
 25 their information management system. They've

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1 already come forward in their budget
 2 submission looking for additional funding. At
 3 any point in time did it occur to you or the
 4 people advising you that perhaps this is the
 5 reason that there's this disconnect might have
 6 to do with that inadequacy which was known to
 7 you?
 8 MR. WISEMAN:
 9 A. As I said a little while back earlier this
 10 morning, I did at some point, but not here.
 11 And I think the--at a point in time and I said
 12 earlier that Robert Thompson, in the role that
 13 he played and started to play early in that
 14 summer and started to engage the Centre of
 15 Health Information to start reconciling it,
 16 you know, there was that recognition that this
 17 needed to happen because this information
 18 obviously we couldn't rely on it any more.
 19 But where we are at this point in time here, I
 20 was still relying on the information being
 21 shared by Eastern Health.
 22 CHAYTOR, Q.C.:
 23 Q. So it hadn't dawned on you at this point in
 24 time that -
 25 MR. WISEMAN:

1 A. That's right.
 2 CHAYTOR, Q.C.:
 3 Q. - well, maybe there's something underlying
 4 this issue, maybe it's the information
 5 management system, why am I getting this
 6 different information. Okay, so this part
 7 here then in your e-mail where you say, "The
 8 part about how I too regret is not accurate,"
 9 you're letting your Communications Director
 10 know this. Now, would that be normal if
 11 there's something in the media that you're
 12 quoted as saying you take issue with, what
 13 would you normally do?
 14 MR. WISEMAN:
 15 A. There's a--depending on the nature of it,
 16 sometimes we can, as in this particular story
 17 that's being referenced here, there was a
 18 response written to the Globe from--with my
 19 signature from government, you know, pointing
 20 out some of the inaccuracies in, what we
 21 believe inaccuracies in the story. If there's
 22 a, I guess, an issue of some material
 23 substance, you know, we'll take exception to
 24 it by making contact with the media. In this
 25 particular case here, for example, I think if

1 in a position to release the information, I
 2 wasn't the Minister, I wasn't involved in the
 3 issue at that point in time, so any
 4 information released prior to my becoming
 5 Minister in January, I had no involvement
 6 with, and that was my -
 7 CHAYTOR, Q.C.:
 8 Q. Now, Tansy had sent this to a number of
 9 people, Brian Crawley, Elizabeth Matthews,
 10 Robert Thompson, John Abbott, Moira, yourself
 11 and others. And this is an article written by
 12 Stephanie Porter on May 19th, 2007 -
 13 MR. WISEMAN:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. And you do, indeed, write a letter, but I
 17 believe that happens May 24th, 2007 by--and
 18 it's in response to an article written by
 19 Andre Picard?
 20 MR. WISEMAN:
 21 A. Yes. I think I was asking her or questioning
 22 her what do you do when that happens.
 23 CHAYTOR, Q.C.:
 24 Q. Yes. And in this one, so your e-mail exchange
 25 back to Tansy concerns "Health Minister, Ross

1 you scroll down further in this e-mail -
 2 CHAYTOR, Q.C.:
 3 Q. And I don't know that this is the one, though,
 4 Mr. Wiseman, that you--I think -
 5 MR. WISEMAN:
 6 A. But I think if you look at, if you continue to
 7 scroll down to page 3 of this 205 -
 8 CHAYTOR, Q.C.:
 9 Q. I think it's Andre Picard's that you take
 10 issue with?
 11 MR. WISEMAN:
 12 A. Yes. And if you scroll down further on page 3
 13 of this Exhibit 0207, near the bottom of page
 14 3 the quote in question says, "Health
 15 Minister, Ross Wiseman, said he too regrets
 16 not releasing the information earlier."
 17 CHAYTOR, Q.C.:
 18 Q. Right, okay.
 19 MR. WISEMAN:
 20 A. I wasn't in a position to control the release
 21 of the information, I wasn't the Minister
 22 earlier. So if I--and I've indicated when I
 23 use the word "I regret" I regret it when I
 24 have an influence or control over it and I had
 25 some personal involvement in it. So I wasn't

1 Wiseman, said he too regrets not releasing
 2 information earlier." And what you're saying
 3 to us, what you were saying is inaccurate, is
 4 that you didn't personally regret that because
 5 you weren't in control of it at the time?
 6 MR. WISEMAN:
 7 A. It was regrettable that it didn't get, but I
 8 mean, I personally wasn't accepting
 9 responsibility for something that happened
 10 before I became Minister or something that
 11 someone else had a control over and I didn't.
 12 CHAYTOR, Q.C.:
 13 Q. But when you're speaking now, are you speaking
 14 as Ross Wiseman, the person, or are you the
 15 spokesperson for the government?
 16 MR. WISEMAN:
 17 A. When I'm speaking, I'm speaking on behalf of
 18 government.
 19 CHAYTOR, Q.C.:
 20 Q. Yes. But you weren't saying that you regret
 21 that the information wasn't released or -
 22 MR. WISEMAN:
 23 A. If I were speaking--I mean, the context in
 24 which this happened, Mr. Tilley was
 25 apologizing for, you know, his organization

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1 and what he--because he personally was
 2 involved with that. And in this particular
 3 instance here, I viewed this as being me being
 4 personally responsible and I wasn't, so that's
 5 the point I was making to Tansy here.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. So Tansy comes back to you and says,
 8 "Do you want me to contact her?" So
 9 presumably Stephanie Porter, the author of the
 10 article. And you ask--you shoot back to Tansy
 11 a few minutes later, "What do you think? The
 12 comment is not a quote but rather her
 13 interpretation, plus if we call, will it
 14 prompt the direct question of do I regret."
 15 MR. WISEMAN:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And her advice to you two minutes later is, "I
 19 would leave it. If she calls to do a follow-
 20 up story, we can correct her last
 21 misinterpretation of what you said."
 22 MR. WISEMAN:
 23 A. Um-hm.
 24 CHAYTOR, Q.C.:
 25 Q. And then you say, "Thank you."

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1 MR. WISEMAN:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. So why were you concerned if she called it
 5 will prompt the direct question, "If I do
 6 regret."?
 7 MR. WISEMAN:
 8 A. We get into the same discussion you and I just
 9 had then about in terms of, you know, are you
 10 speaking on behalf of yourself or speaking on
 11 behalf of the government. The semantics of
 12 that debate, I didn't want to have because
 13 purely, I mean, this is regrettable that it
 14 happened and that, and I was making a
 15 distinction between my personal responsibility
 16 and that of Eastern Health in this issue and
 17 the dissemination of information.
 18 CHAYTOR, Q.C.:
 19 Q. And if you had been posed the direct question,
 20 "Do I regret" what would your answer have
 21 been?
 22 MR. WISEMAN:
 23 A. No, my comment would have been, as I just
 24 framed it here for you now, I personally
 25 wasn't the Minister at the time this was

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1 released and I had no personal involvement
 2 with it. Government, obviously, it's
 3 regrettable that this happened and it should
 4 not have happened.
 5 CHAYTOR, Q.C.:
 6 Q. Yes, okay. Now, Mr. Wiseman, I think perhaps
 7 that went into the long weekend at that point.
 8 That's May 18th or May 19th. Is there
 9 anything else around this time period, May
 10 20th, anything around there, May 21st,
 11 anything happening on this issue?
 12 MR. WISEMAN:
 13 A. I don't recall. As I just said, it's a
 14 weekend and that tends to be a--in terms of
 15 from a media perspective. There may have been
 16 some weekend telephone conversations I may
 17 have had, but I don't recall them.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And eventually then on--or coming up in
 20 a couple of days, on May 22nd, there's a
 21 briefing for all MHAs.
 22 MR. WISEMAN:
 23 A. Um-hm.
 24 CHAYTOR, Q.C.:
 25 Q. And how did that come about?

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1 MR. WISEMAN:
 2 A. It came about as a result, I think, of an
 3 exchange in the House around, you know, the
 4 information and the opposition, you know, not
 5 knowing information and wanting to know
 6 information and so we wanted to make sure that
 7 that information was provided to them, as
 8 well, so we did it for all MHAs the same time.
 9 Because obviously MHAs represent, you know,
 10 the people of the province and their
 11 respective districts and wanted to make sure
 12 that, you know, they too were seized with the
 13 information, had some understanding of the
 14 issue, because no doubt they were dealing with
 15 some of their constituents and some questions
 16 that they were raising.
 17 CHAYTOR, Q.C.:
 18 Q. And who did--whose idea was it to d the MHA
 19 presentation?
 20 MR. WISEMAN:
 21 A. I'm not sure exactly now how that unfolded.
 22 CHAYTOR, Q.C.:
 23 Q. Was it a request from the MHAs, was it a
 24 request from the opposition?
 25 MR. WISEMAN:

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1 A. I think it came about as a result of, it may
 2 have come about as a result of some questions
 3 from the opposition, if I'm not mistaken,
 4 actually, and it kind of grew from there.
 5 CHAYTOR, Q.C.:
 6 Q. And the purpose was to provide them with as
 7 much information as you yourself had or the
 8 Department had?
 9 MR. WISEMAN:
 10 A. So they were able to respond to, you know, any
 11 questions they might have themselves as MHAS
 12 representing the people of the province and
 13 their respective districts and that was the
 14 intent.
 15 CHAYTOR, Q.C.:
 16 Q. And who did that presentation?
 17 MR. WISEMAN:
 18 A. It was Eastern Health but I'm not sure who was
 19 actually present for that.
 20 CHAYTOR, Q.C.:
 21 Q. So it was officials from Eastern Health who
 22 conducted it?
 23 MR. WISEMAN:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And did people from your Department
 2 also participate in it?
 3 MR. WISEMAN:
 4 A. There may have been someone in attendance, but
 5 I'm not sure if they participated in the
 6 actual content and the presentation itself.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. And if we could have, then, P-0209?
 9 And, Mr. Wiseman, this is another e-mail
 10 exchange, and it's between your Director of
 11 Communication, Tansy Mundon, and your Deputy
 12 Minister at the time, John Abbott. And if we
 13 scroll down to the bottom, this was taking
 14 place May 21st. Were you involved, by the
 15 way, in the preparation for the presentation
 16 to the MHAS?
 17 MR. WISEMAN:
 18 A. No, I was not.
 19 CHAYTOR, Q.C.:
 20 Q. So who in the Department would have been
 21 involved?
 22 MR. WISEMAN:
 23 A. In terms of its content, I don't think anyone
 24 in the Department would have been involved in
 25 deciding on its content or contributing to its

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1 content. The Communications people may have
 2 been involved in discussions with Eastern
 3 Health about the process. And I'm saying
 4 maybe because I don't know for a fact, but it
 5 would seem a logical person to have been
 6 involved, but I'm not of any others.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. And would your Department have given
 9 your, some of your concerns or misgivings at
 10 this--by this point in time in terms of
 11 information that you were receiving, would
 12 your Department have been involved in
 13 reviewing the material that was presented
 14 before it was actually given to the MHAS?
 15 MR. WISEMAN:
 16 A. They may have, but I'm not certain.
 17 CHAYTOR, Q.C.:
 18 Q. Okay.
 19 MR. WISEMAN:
 20 A. I don't recall suggesting myself that it
 21 should be done, but whether or not officials
 22 took it upon themselves to do that, I'm not
 23 certain.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. All right, so I'm just going to start

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1 at the bottom of the page here, it's just a,
 2 it's Tansy to much of the same group of
 3 people, Brian Crawley, Elizabeth Matthews and
 4 yourself included, Robert Thompson and May
 5 19th, 12:35. And she's indicating the subject
 6 is "Media Coverage, ER/PR" "I've reviewed all
 7 media coverage since 12:30 p.m. yesterday when
 8 Eastern Health held a briefing for media." So
 9 it appears that Tansy was keeping an eye on
 10 all the media coverage and keeping you
 11 informed of that?
 12 MR. WISEMAN:
 13 A. Um-hm.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. So you were being kept advised of any
 16 reports following on the media briefing?
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. All right. And then the e-mail directly above
 21 it John Abbott is writing to Tansy Mundon.
 22 And this is now dated May 21st at 10:18 a.m.
 23 The subject is "Re: Media Coverage, ER/PR."
 24 And I guess he's responding then to her e-
 25 mail. But the subject that he's writing about

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1 is, "Tomorrow's briefing of MHAS." And she
 2 says--he writes, sorry, "For tomorrow's
 3 briefing of MHAS what will be Eastern's
 4 massaging on what government knew and when?
 5 Please call my cell. Thanks." And then the
 6 response back from Tansy to John at 10:41 a.m.
 7 the same morning is, "John, this was asked on
 8 Friday at the briefing, but I think you should
 9 have that discussion with George since he will
 10 be answering the question." Now, Mr. Wiseman,
 11 this indicates that on Friday at the briefing
 12 the question had been asked, "What would
 13 Eastern's massaging be as to what government
 14 knew and when?" Do you recall that question
 15 having been asked?
 16 MR. WISEMAN:
 17 A. At the briefing or -
 18 CHAYTOR, Q.C.:
 19 Q. Yes. It says, "This was asking on Friday at
 20 the briefing" the question of "For tomorrow's
 21 briefing,' this is what Tansy--or John is
 22 asking, "Tomorrow's briefing of MHAS what will
 23 be Eastern's massaging on what government knew
 24 and when?"
 25 MR. WISEMAN:

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1 A. I'm not, I'm not aware that that question came
 2 up during the briefing on Friday. As I said
 3 to you a moment ago, I wasn't at the briefing
 4 on Friday, I wasn't aware that a concern had
 5 been expressed about that. And I can't recall
 6 having the conversation with John around what
 7 George might say in the briefing to MHAS. And
 8 if I had, there'd be whatever information we
 9 had, we had, whatever information was flowing
 10 to government would have been flowing to
 11 government, so there would be no reason to not
 12 indicate to anyone, whether it was on Friday
 13 or on the briefing to MHAS when information
 14 was shared with the Department and whether it
 15 was Minister Ottenheimer in 2005 or any
 16 information that might have been shared with
 17 Minister Osborne in 2006. But I'm not, I
 18 can't recall having a conversation with
 19 respect to it.
 20 CHAYTOR, Q.C.:
 21 Q. This question is coming from John Abbott, your
 22 Deputy Minister, who had given a presentation
 23 on May 17th to the Cabinet outlining all the
 24 briefing notes that Cabinet had.
 25 MR. WISEMAN:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. He had slides which indicated what government
 4 knew and when.
 5 MR. WISEMAN:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So he--so Mr. Abbott made that
 9 presentation to Cabinet -
 10 MR. WISEMAN:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. - on May 17th. So why would Mr. Abbott have
 14 to ask "For tomorrow's briefing of MHAS, what
 15 will Eastern's massaging be on what government
 16 knew and when?"
 17 MR. WISEMAN:
 18 A. I'm not certain. Like, I don't know why he'd
 19 want to, because he had the information
 20 available to him and there wouldn't have been
 21 any direction from me not to share it or
 22 wouldn't have been any direction that anyone
 23 else I would think of would have told him not
 24 to share it, so I'm not sure why he'd be
 25 wondering why he would not share it.

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1 CHAYTOR, Q.C.:
 2 Q. Yes, does it seem peculiar to you in terms of
 3 Eastern's massaging on what government knew
 4 and when and George presumably George Tilley
 5 is going to answer that question?
 6 MR. WISEMAN:
 7 A. Yeah. I don't know what--it is a peculiar
 8 question because whether--I'd only be
 9 speculating if I start to think about why he
 10 might pose the question. But fundamentally,
 11 you know, Mr. Abbott would have known, as
 12 you've just pointed out, he made a
 13 presentation to Cabinet so he was aware of how
 14 the information was flowing from Eastern
 15 Health to government. And so now any time in
 16 the future as he would talk about that,
 17 whether it was in the context of a
 18 conversation with George Tilley or a context
 19 of developing a presentation for--or
 20 presenting information to other groups, that
 21 information was still valid, still accurate
 22 and still open to share. So I'm not sure why
 23 this exchange took place.
 24 CHAYTOR, Q.C.:
 25 Q. Was there a concern that Eastern might say

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1 something different or something about when
 2 government knew the full numbers?
 3 MR. WISEMAN:
 4 A. No concern that I would have.
 5 CHAYTOR, Q.C.:
 6 Q. Was that discussed with you by Mr. Abbott?
 7 MR. WISEMAN:
 8 A. Not that I can recall. If it had been, I
 9 don't recall the conversation, but clearly I
 10 would have no concern at all. I mean, if
 11 information was flowing from Eastern Health to
 12 the department, that's statement of fact, it
 13 happened on certain dates, the Cabinet had
 14 just had a presentation. I wouldn't be able
 15 to try to speculate why the question would be
 16 posed here in this context. Because clearly
 17 there's nothing that we would want to conceal
 18 or hide here at all.
 19 CHAYTOR, Q.C.:
 20 Q. So whatever Mr. Abbott meant by this, we'll
 21 have to take it up with Mr. Abbott, you're
 22 telling me?
 23 MR. WISEMAN:
 24 A. Yes, yeah.
 25 CHAYTOR, Q.C.:

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1 Q. You've -
 2 MR. WISEMAN:
 3 A. I don't -
 4 CHAYTOR, Q.C.:
 5 Q. - had no conversations with him around that?
 6 MR. WISEMAN:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. And you have--you can't shed any light on what
 10 he may be referring to in terms of Eastern's
 11 massaging on when government knew and what
 12 government knew?
 13 MR. WISEMAN:
 14 A. Not at all, I have no idea.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. Sorry, just one moment, Commissioner.
 17 Okay. So, I take it then, the briefing went
 18 ahead on May 22nd, of the MHA's.
 19 MR. WISEMAN:
 20 A. Uh-hm.
 21 CHAYTOR, Q.C.:
 22 Q. And did you attend that?
 23 MR. WISEMAN:
 24 A. No, I didn't. No.
 25 CHAYTOR, Q.C.:

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1 Q. You didn't? Okay. And why not?
 2 MR. WISEMAN:
 3 A. I don't know if it was any conscious decision
 4 not to for any reason. You know, there were
 5 other things that I was involved with, and the
 6 information was being disseminated to my
 7 colleagues in the House and that was the
 8 intent of the presentation.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. So you're the Minister though
 11 responsible for this particular issue.
 12 MR. WISEMAN:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. But you didn't attend the briefing.
 16 MR. WISEMAN:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. Were you somewhere else? Were you out
 20 of the area?
 21 MR. WISEMAN:
 22 A. No, I wouldn't have been out of the city.
 23 CHAYTOR, Q.C.:
 24 Q. Yes.
 25 MR. WISEMAN:

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1 A. But I was involved in other activities, but
 2 there was no conscious decision not to go for
 3 any kind of reason, other than the fact that I
 4 was otherwise engaged in something else.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. And, Mr. Wiseman, the inquiry is called
 7 May 22nd.
 8 MR. WISEMAN:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. Why did the government feel the need to
 12 call this inquiry?
 13 MR. WISEMAN:
 14 A. As I was sharing with you yesterday, you know,
 15 the period from May 15th and when I started to
 16 get engaged in the discussion around this in a
 17 very intense way, there were a number of very
 18 haunting questions. One, what happened in the
 19 lab between 1997 and 2005? What happened, and
 20 why were there breakdowns in the issues of
 21 disclosure? How come patients, you know, were
 22 saying that they were not being contacted?
 23 Eastern Health were saying they all are. We
 24 had, you know, a series of strategies that had
 25 been implemented, introducing a quality

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1 assurance program, which implies that there
 2 either wasn't one there before or what was
 3 there needed to be strengthened in a
 4 substantial way. Were adding new human
 5 resources to it. Were providing training to
 6 those people who are working there, implying
 7 that what they had may not have been
 8 sufficient. And so these were some of the
 9 facts that were before us. The fact that we
 10 had had, you know, a major--from 2005 when the
 11 issue got initially identified up to now, you
 12 know, we had--and we were hearing loud and
 13 clear in this period that I'm talking about
 14 here now in those four or five days between,
 15 you know, May 15th and where we are today--or
 16 where we were on that point in time, that, you
 17 know, people were--the general public were
 18 demanding to have some answers, and
 19 legitimately so. And we wanted to make sure
 20 that--in getting the answers as a part of this
 21 process was to ensure that we got to the
 22 bottom of it, we better understood it. We did
 23 it in a very open and in a very transparent
 24 way and in a fashion that would help restore
 25 confidence in this area of the lab, and to

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1 ensure that we didn't have any erosion of the
 2 confidence in our health system overall. And
 3 when people start, you know, questioning their
 4 test results, have reason to be concerned
 5 about the treatment that they're getting, then
 6 that has, you know, tremendous impact on our
 7 system overall, and we needed to ensure that--
 8 to protect that--because we do a lot--and the
 9 health system is a very large complex system
 10 and a lot of good work is taking place each
 11 and every day in our health system. Good,
 12 capable, competent people out there who are
 13 doing a great job and doing a great service to
 14 the people of the province, and we can't do
 15 anything that undermines that, but we need to
 16 get to the bottom of what's happening here.
 17 So an inquiry--and there were other things
 18 being talked about in terms of a review, some
 19 kind of a more public fashion than maybe
 20 bringing in external reviewers to go inside
 21 and start looking at things. So this public
 22 process that an inquiry would give you would
 23 provide an opportunity to have a discussion, a
 24 full discussion, a full open discussion around
 25 what took place here in a public way like

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1 we're doing. The powers that the Commission
 2 would have obviously would be far more
 3 reaching than the powers of any other kind of
 4 mechanism that we would put in place: the
 5 ability to subpoena witnesses, subpoena
 6 documentation, to bring expert opinion to bear
 7 if that was felt to be necessary. And so with
 8 the abilities and capacity that you'd have
 9 within a Commission such as this to explore
 10 many aspects of what went on here, including
 11 the management, decision-making processes, was
 12 felt that this was to be the most appropriate
 13 tool.
 14 CHAYTOR, Q.C.:
 15 Q. Yes.
 16 MR. WISEMAN:
 17 A. And that's what brings us here today.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And so, I take it, it's fair to say
 20 then that at the point of calling the inquiry,
 21 the government didn't have full confidence in
 22 how the issue had been managed to date.
 23 MR. WISEMAN:
 24 A. That's a fair statement, yes.
 25 CHAYTOR, Q.C.:

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1 Q. And, I take it, it's all fair to say that
 2 government had concerns or misgivings
 3 regarding the completeness and accuracy of the
 4 information that had come forward on this
 5 issue.
 6 MR. WISEMAN:
 7 A. We had a real concern about not fully
 8 understanding what went on. You know, there
 9 was--you know, this period of time between
 10 1997 and 2005 was a period where the test
 11 results, you know, were--there's some question
 12 about the results of those tests. And then we
 13 have--the whole issue of the management of the
 14 process itself was being questioned here. And
 15 so that full composite picture that I just
 16 described a moment ago, all of it together
 17 brought us to that decision.
 18 CHAYTOR, Q.C.:
 19 Q. And in answering my question earlier and
 20 listing reasons, you indicated what had
 21 happened in the lab and you also indicated the
 22 disconnect with the patients saying that they
 23 weren't contacted. So my question is, did the
 24 government have concerns as of May 22, 2007,
 25 about the completeness and the accuracy that

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1 the government was receiving in terms of the
 2 communication piece?
 3 MR. WISEMAN:
 4 A. There was--the communication to patients was
 5 not the deciding factor in calling an inquiry.
 6 CHAYTOR, Q.C.:
 7 Q. No, but was it one of the factors?
 8 MR. WISEMAN:
 9 A. It was one of the things that was being
 10 questioned, whether or not, you know, the
 11 information was being complete. We were
 12 getting reassured by Eastern Health that we
 13 were but, fundamentally, wanted to make sure
 14 the patient had the information that they
 15 needed to make decisions about their care.
 16 CHAYTOR, Q.C.:
 17 Q. Maybe we could have P-0001, please? Mr.
 18 Wiseman, this is the gazetted Order in Council
 19 established in the inquiry, and the Terms of
 20 Reference are set out in section three. And,
 21 Mr. Wiseman, I take it, you were involved,
 22 were you, in the drafting or involved in the
 23 discussions surrounding what the Terms of
 24 Reference would be?
 25 MR. WISEMAN:

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1 A. That was an issue of some concern by the
 2 Opposition that--because I'm the current
 3 Minister, and we had two former Ministers
 4 sitting in Cabinet that we would--they had
 5 expressed some concern that the three of us
 6 may have some undue influence on crafting the
 7 Terms of Reference that somehow influence or
 8 restrict what the Commission may look at, and
 9 that might in fact, you know, be seen as a
 10 conflict. And so I committed to ensure that
 11 the three Ministers, myself--and behalf of my
 12 two former colleagues--or two colleagues, who
 13 had held the position formally, that we would
 14 not participate in a decision around crafting
 15 the Terms of Reference.
 16 CHAYTOR, Q.C.:
 17 Q. So you had no participation in the decision
 18 around it. Were you involved in any
 19 discussions surrounding -
 20 MR. WISEMAN:
 21 A. Involved in discussions around the Commission--
 22 -establishing the Commission.
 23 CHAYTOR, Q.C.:
 24 Q. But in terms of crafting -
 25 MR. WISEMAN:

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1 A. But not in terms of crafting the Terms of
 2 Reference. That would have been crafted, I
 3 suspect, by Executive Council together with
 4 advice from the Department of Justice.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. So neither you or Mr. Ottenheimer nor
 7 Mr. Osborne had any input into the Terms of
 8 Reference.
 9 MR. WISEMAN:
 10 A. I can speak clearly for myself. I wouldn't
 11 want to speak on behalf of my two colleagues.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So the terms include--and the issue of
 14 communications that I was just asking you
 15 about, the first term, of course, is to
 16 inquire why the test resulted in a high rate
 17 of conversions. Secondly, whether the problem
 18 could have been detected earlier. The third
 19 one is inquire into whether, once detected,
 20 the responsible authorities responded and
 21 communicated in a timely manner to those women
 22 and men who needed retest and those who were
 23 being tested for the first time.
 24 MR. WISEMAN:
 25 A. Uh-hm.

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1 CHAYTOR, Q.C.:
 2 Q. D, inquire into whether, once detected, the
 3 responsible authorities communicated in an
 4 appropriate and timely manner with the general
 5 public, and internally within the health
 6 system, about the issues and circumstances
 7 surrounding the change in test results and the
 8 new testing procedures. So, Mr. Wiseman, it
 9 appears that at least two of the Terms of
 10 Reference center around communication
 11 processes in this--regarding this issue. And
 12 my question is, I take it, the government had
 13 concerns about completeness and accuracy of
 14 information in terms of communications prior
 15 to establishing the Commission, or certainly
 16 by the point that these Terms of Reference -
 17 MR. WISEMAN:
 18 A. Yeah, the fact that there would suggest that
 19 they wanted to make sure that understood
 20 exactly what the issues were around
 21 communication, as the terms very clearly
 22 indicate. You know, they wanted to inquire
 23 around and understand whether or not
 24 appropriate communication occurred, yes.
 25 CHAYTOR, Q.C.:

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1 Q. Yes, appropriate and timely communications.
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Yes. Okay. If we can have P-0212, please,
 6 page four. And this I understand, Mr.
 7 Wiseman, then is the announcement of the
 8 inquiry, May 22, 2007, Government to undertake
 9 a Commission of Inquiry on Estrogen and
 10 Progesterone Receptor Testing for Breast
 11 Cancer Patients.
 12 MR. WISEMAN:
 13 A. Uh-hm.
 14 CHAYTOR, Q.C.:
 15 Q. Do you have that in your book, sir?
 16 MR. WISEMAN:
 17 A. Yes. I'm looking at here, yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And this list, of course, too, the
 20 review of what it will address and the Terms
 21 of Reference are set out.
 22 MR. WISEMAN:
 23 A. Uh-hm.
 24 CHAYTOR, Q.C.:
 25 Q. Now included in this news release, the media

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1 contact person is Tansy Mundon, who's the
 2 Director of Communications for your
 3 department, or was at that point in time. I
 4 understand it's Glenda Power now. There's
 5 also a backgrounder, and is that normal? Do
 6 you normally send out a backgrounder with a
 7 news release?
 8 MR. WISEMAN:
 9 A. I wouldn't--I don't know if I'd--because the
 10 word "normal" implies it happens all the time.
 11 CHAYTOR, Q.C.:
 12 Q. Is it the usual?
 13 MR. WISEMAN:
 14 A. I've seen it happen, but there's been times
 15 there's been no backgrounder attached to the
 16 release. I suspect, and I don't know this to
 17 be a fact, but just based on--because I'm
 18 thinking about some of the things we've sent
 19 out releases on where there's been
 20 backgrounders when there's been a bit of
 21 detail that needs to create some context for
 22 why it is the release exists or what the issue
 23 is being addressed in the release is.
 24 CHAYTOR, Q.C.:
 25 Q. Uh-hm.

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1 MR. WISEMAN:
 2 A. What would be some rationale for it or some
 3 context for it. Backgrounders are sometimes
 4 included for that reason.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. Now I hear you say that you weren't
 7 involved in the drafting of the terms, but you
 8 were involved then in the announcement.
 9 MR. WISEMAN:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And you're quoted in the release as
 13 saying, "Government recognizes it is of the
 14 utmost importance for those directly involved,
 15 and the general public, to understand what
 16 happened to ensure that this situation does
 17 not reoccur. Through an independent review,
 18 we will endeavour to get those answers." So
 19 you were involved in the announcement of the
 20 inquiry.
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And would you have been provided then with
 25 this as well as the backgrounder?

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1 MR. WISEMAN:
 2 A. Yes, I guess I would have been.
 3 CHAYTOR, Q.C.:
 4 Q. Okay.
 5 MR. WISEMAN:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And I guess my main question would be, because
 9 I'll point to a few things in it--but my main
 10 question being, when you've set out questions
 11 which included what went wrong and why it
 12 wasn't detected until 2005, once detected,
 13 whether or not the timely action is
 14 implemented to ensure possible treatment and,
 15 actually, this is seven key questions to be
 16 addressed which aren't the exact wording of
 17 the Terms of Reference, but I guess it's a
 18 summary or a paraphrasing. And so I'm just
 19 wondering, if those are the questions to be
 20 answered, then generally this backgrounder
 21 then gives a lot of information and cites what
 22 are purported to be facts around the very
 23 issues that are being asked of the
 24 Commissioner to determine, and I'm just
 25 wondering was there any thought given to the

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1 appropriateness of that?
 2 MR. WISEMAN:
 3 A. I can clearly tell you that there was never
 4 any intent to in any way, you know, control or
 5 to limit or to restrict the activity of the
 6 Commissioner and carrying out this review and
 7 the--we would have recognized the powers that
 8 the legislation would give the Commissioner in
 9 carrying out the role, and the gazetted Terms
 10 of Reference would have been what's--you know,
 11 would have been, you know, what would guide
 12 the appointment of the Commissioner, and
 13 anything that would be attached to a briefing
 14 note or attached to a press release that would
 15 be in any way, or thought to in any way,
 16 restrict or intend to undermine or to pre-
 17 judge what the Commissioner might write at the
 18 end of the day was purely non-intentional if
 19 it was interpreted that way.
 20 CHAYTOR, Q.C.:
 21 Q. No, and that's not what's being suggested.
 22 I'm just wondering why there would be the need
 23 to give then--and I'll take you through some
 24 of the points--
 25 MR. WISEMAN:

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1 A. Uh-hm.
 2 CHAYTOR, Q.C.:
 3 Q. --that are actually part of the questions
 4 that, hopefully, may be answered through this
 5 process.
 6 MR. WISEMAN:
 7 A. Sure. As well, the question you posed on
 8 that--to be frank with you, I don't know if I
 9 can give you an answer as to why it was there.
 10 I hadn't personally given it a lot of thought
 11 in the fashion you're framing it. Nor have I
 12 participated in a conversation before it
 13 released with respect, you know, the merits of
 14 doing it or the pros and cons of doing it or
 15 whether it should or should not be done.
 16 CHAYTOR, Q.C.:
 17 Q. Uh-hm.
 18 MR. WISEMAN:
 19 A. So if it was done, it was done in the context
 20 of being a topic that would have required some
 21 context as we historically would attach
 22 backgrounders to press releases, but there
 23 would have been no other intent other than
 24 just to purely create some context.
 25 CHAYTOR, Q.C.:

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1 Q. And this, of course, is going to the general
 2 public.
 3 MR. WISEMAN:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. If we could just look then at the
 7 backgrounder, the third bullet. "Eastern
 8 Health first became of the problem with the
 9 ER/PR test results in May 2005 and immediately
 10 conducted an internal review." Now are you at
 11 this point in time able to tell me what the
 12 internal review or, as of May 22nd what did
 13 you understand the internal review was?
 14 MR. WISEMAN:
 15 A. That internal was the--as I would understand
 16 it, that would--as I see it printed here like
 17 this, I think that might have been in or
 18 around the time when they recognized that
 19 there was a particular case that they had
 20 found had a vast change in its test that was
 21 done originally from what it was--the original
 22 test was done some time prior to this and now
 23 the physician involved was now retesting it
 24 within Eastern Health and came across a real
 25 discrepancy, and they did some further testing

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1 on some others and that's what gave rise to
 2 the recognition that we have a problem here.
 3 CHAYTOR, Q.C.:
 4 Q. Yes, okay. And if we just go back up to--
 5 you're saying that "Eastern Health immediately
 6 conducted an internal review. In July 2005,
 7 they made a decision to retest all negative
 8 ER/PR tests done in the time period to ensure
 9 that if there was one patient who could
 10 benefit as a result of change in their test
 11 result and subsequent treatment change, that
 12 it was important that this be done." They
 13 also suspended testing. So they immediately
 14 conducted an internal review, and the reason
 15 for Eastern Health doing that is set out
 16 there. So in terms of the Commission being
 17 asked to look at the timeliness of responses
 18 and communications, this backgrounder is
 19 suggesting that it was done--the internal
 20 review, anyhow, was done immediately. The
 21 next process--the next bullet, sorry, says
 22 "The process of retesting and to conduct
 23 external and internal reviews in the lab took
 24 about one year to complete," and it continues
 25 with "The assessments were conducted by a

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1 panel of experts in cancer care, once the test
 2 results came back." Sorry, I missed a
 3 sentence. "The results were assessed to
 4 determine if a recommended treatment change
 5 was necessary. The assessments were conducted
 6 by a panel of experts in cancer care,
 7 including oncologists, pathologists and
 8 surgeons. The first test results were
 9 received by Eastern Health in October 2005.
 10 All the test results were received by February
 11 2006." Now, Mr. Wiseman, today we know that's
 12 not the case.
 13 MR. WISEMAN:
 14 A. That's right.
 15 CHAYTOR, Q.C.:
 16 Q. The next bullet says "There were a total of
 17 939 patients with ER negative reports. Of the
 18 763 patients reviewed, 317 patients had a
 19 change in result. Of that number, 117 of the
 20 patients had a resulting change in treatment.
 21 A further 176 patients of the total 939
 22 originally reported as negative are deceased."
 23 What about those numbers, Mr. Wiseman?
 24 MR. WISEMAN:
 25 A. They're incorrect.

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1 CHAYTOR, Q.C.:
 2 Q. The next bullet, "Eastern Health contacted
 3 each patient who was affected by the ER/PR
 4 test review, or their family physician, to
 5 make sure they received all the information
 6 and support they required. They were told
 7 either one of three things. Firstly, that
 8 their tissue had been retested and there was
 9 no change in the original results, that their
 10 tissue had been tested and that Eastern Health
 11 was recommending a change in their treatment,
 12 or that although there was a change from their
 13 original test result, no change in treatment
 14 was recommended. Eastern Health contacted
 15 each patient who was affected by the ER/PR
 16 test review, or their family physician, to
 17 make sure they received all the information."
 18 What about that statement, Mr. Wiseman?
 19 MR. WISEMAN:
 20 A. We now know that that's incorrect as well.
 21 CHAYTOR, Q.C.:
 22 Q. The next bullet, "There was full disclosure to
 23 patients and their families once test results
 24 became available. Unfortunately, test results
 25 came back at different times, and there was a

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1 delay in the retesting process which lead to
 2 some patients feeling they were not informed
 3 in a timely fashion. Ultimately, Eastern
 4 Health's primary concern was notifying all
 5 affected individuals." Mr. Wiseman, what
 6 about stating that--the government stating
 7 that as the backgrounder to an inquiry in
 8 which the issue of whether or not the
 9 communication was done in a timely and
 10 appropriate manner is one of the questions
 11 posed? Do you have any comment?
 12 MR. WISEMAN:
 13 A. No, I mean, I--obviously, as you were
 14 scrolling down through this backgrounder now
 15 in the context of being a part of this hearing
 16 as we're speaking and as you compare it to the
 17 Terms of Reference and/or the gazetted Terms
 18 of Reference--you know, this is information
 19 that we've asked the Commission to actually
 20 determine for us.
 21 CHAYTOR, Q.C.:
 22 Q. Yes. Yes.
 23 MR. WISEMAN:
 24 A. And so, you know, to be asking a series of
 25 questions or asking the Commission or giving

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1 the Commission a mandate and a Terms of
 2 Reference to do a particular task, and then to
 3 attach some information to that that actually--
 4 -statements of fact as if some of the
 5 questions are already answered was not
 6 appropriate, obviously, as I look at it here
 7 now, but I wanted to assure the Commissioner
 8 and the people of the province that in no way
 9 did we want to provide this to in any way
 10 undermine the activity of the Commission and
 11 that was--I shared with you a few moments ago
 12 the rationale we use for determining that the
 13 Commission was the way to go because of its
 14 ability to be far reaching and its ability to
 15 be able to--you know, to get at the questions
 16 that we need answered and to be able to bring
 17 to bear the influence of the legislation that
 18 governs you to ensure that you're able to get
 19 access to the information that you want. So,
 20 I just want to make sure that that is
 21 abundantly clear. There's no malicious intent
 22 here -
 23 CHAYTOR, Q.C.:
 24 Q. No, no.
 25 MR. WISEMAN:

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1 A. - and not intent here to, you know, in any way
 2 -
 3 CHAYTOR, Q.C.:
 4 Q. And that's not what's being suggested.
 5 MR. WISEMAN:
 6 A. No, no, but I want to make it publicly clear -
 7 CHAYTOR, Q.C.:
 8 Q. In terms of examining the communications from
 9 responsible authorities including, of course,
 10 yourself and the department -
 11 MR. WISEMAN:
 12 A. Exactly, yes.
 13 CHAYTOR, Q.C.:
 14 Q. - this is part of the communication that has
 15 gone forth on this issue.
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. So, that's why it's important that I put this
 20 to you and give you an opportunity to speak to
 21 it.
 22 MR. WISEMAN:
 23 A. And government recognizes as well, I mean, we
 24 recognize this in the very beginning as we
 25 talked about the Terms of Reference. You

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1 know, the Commission will be examining Eastern
 2 Health's role in this. The Commission will be
 3 examining government's role in this and that
 4 was the intent, asking the Commission to do
 5 its work in the first place, to examine all
 6 aspects of what happened with ER/PR testing
 7 within Eastern Health, whether it's
 8 involvement of, you know, government itself;
 9 the regional health authorities. So, this is
 10 a wide sweeping, you know, Commission of
 11 Inquiry that we are involved in here. So,
 12 it's not intended at all to suggest this is a
 13 review of Eastern Health's involvement and
 14 actions--it includes government's as well.
 15 CHAYTOR, Q.C.:
 16 Q. And again, my intent in asking the question is
 17 not so much as to what influence that would
 18 have on the Commission because I would be
 19 confident in saying that it would have none,
 20 in terms of the Commissioner. But it's
 21 important in terms of what the government has
 22 said and the government's response and
 23 communications to the general public -
 24 MR. WISEMAN:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. - on the issue and the information that the
 3 government has put out to the general public
 4 around this issue.
 5 MR. WISEMAN:
 6 A. Yes, I understand that.
 7 CHAYTOR, Q.C.:
 8 Q. So, that's the intent of my line of
 9 questioning here.
 10 MR. WISEMAN:
 11 A. And at the end of the day I would assume that
 12 the Commission will provide some commentary
 13 with respect to that and how it viewed it in
 14 the context of the whole picture here.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And the next two bullets then, there
 17 some more numbers, which is already
 18 acknowledged the number are not accurate at
 19 this point in time. And Eastern Health, the
 20 second to last bullet, it says, "Eastern
 21 Health apologized on Friday for the confusion
 22 created by not disclosing all the information
 23 to the media in December. Although the media
 24 were not informed, the 317 patients who were
 25 directly impacted were informed of their

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1 individuals circumstances". And again not to
 2 belabour -
 3 MR. WISEMAN:
 4 A. That's right.
 5 CHAYTOR, Q.C.:
 6 Q. - the point, but that's not correct.
 7 MR. WISEMAN:
 8 A. I understand that, yes.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And if I can have the same exhibit, but
 11 page one, please. Okay. And this is an e-
 12 mail exchange from your Director of
 13 Communication, Tansy Mundon to a number of
 14 people including Sandra Barnes, Don Burrage,
 15 Josephine Cheeseman, Brian Crawly, Elizabeth
 16 Matthews, Andrea Nolan, Robert Thompson. It's
 17 dated May 22, 2007, 11:01 a.m. And it's "Re:
 18 the draft news release. Revised attached:
 19 Still waiting on feedback from everyone on
 20 Don's suggestion." And again, I appreciate
 21 you've said that you weren't involved in this-
 22 -you weren't involved in the Terms of
 23 Reference, but this seems to be around the
 24 actual announcement of the Commission, but
 25 there's no indication that you received this

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1 e-mail. But I just want you to scroll down
 2 where there's a reply from Elizabeth Matthews
 3 or actually Elizabeth Matthews sent this at
 4 10:42 a.m. in reply to Tansy having forwarded
 5 the draft. And Elizabeth Matthews, we
 6 understand, is Director of Communications for
 7 the Premier's office?
 8 MR. WISEMAN:
 9 A. That's true, yes.
 10 CHAYTOR, Q.C.:
 11 Q. And in number (2), she's got a couple of
 12 comments. At number (2) she states, "the last
 13 bullet on page two says that Eastern Health
 14 contacted all patients. I am of the
 15 understanding that, in fact, Eastern Health
 16 contacted the family physicians who, in turn,
 17 contacted the patients. If this is the case,
 18 this has to change in the backgrounder". And
 19 as I just took you through it, did change.
 20 So, apparently a former draft has just said
 21 that Eastern Health contacted all patients,
 22 but on Elizabeth's suggestion, it's changed to
 23 include "contacted the family physicians who,
 24 in turn, contacted the patients". And she
 25 states, "if this is the case, this has to

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1 change in the backgrounder", excuse me. "It
 2 is critically important that every piece of
 3 information in this news release is 100
 4 percent accurate".
 5 So, the Premier's office certainly
 6 recognized the importance of the news release
 7 being 100 percent accurate.
 8 MR. WISEMAN:
 9 A. Uh-hm. And I think the information that was
 10 in the release, in spite of my commentary
 11 that, you know, the information that--as you
 12 were reading out the items in the
 13 backgrounder, we now know today that they're
 14 accurate. But at the time, we were
 15 communicating this, last year, and at the time
 16 that I was making statements to similar
 17 effects, we believed that to be the facts at
 18 that moment.
 19 CHAYTOR, Q.C.:
 20 Q. Yes.
 21 MR. WISEMAN:
 22 A. And we were relying on information being
 23 supplied by Eastern Health to form that view
 24 and to share that information.
 25 CHAYTOR, Q.C.:

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1 Q. But your belief level had been shaken to the
 2 point that you called a Commission of Inquiry
 3 -
 4 MR. WISEMAN:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. - to determine whether or not that, in fact,
 8 was accurate information. Okay, if I could
 9 have, please, P-0214.
 10 REGISTRAR:
 11 Q. Sorry, what was that number?
 12 CHAYTOR, Q.C.:
 13 Q. 214. Another question and answer briefing
 14 note. Do you have that before you, Mr.
 15 Wiseman?
 16 MR. WISEMAN:
 17 A. P-0214? Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Yes, okay. And I'm just going to take you
 20 down to the bottom and we'll see the date and
 21 the authors--drafted by Beverley Griffiths,
 22 approved by Moira Hennessey, the date is May
 23 23, 2007. So, this is a briefing note
 24 prepared for you the day after the Commission
 25 has been officially called. And under the key

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1 messages, you see the questions that are
 2 posed there, "whether there was an attempt by
 3 the department or Eastern Health to cover up
 4 the findings of the test results. Has Eastern
 5 Health now notified all affected patients of
 6 the results of retesting and why wasn't this
 7 done sooner? At what time did former health
 8 ministers become aware? Why was government"--
 9 sorry--"health ministers become aware of this
 10 issue and why didn't they disclose the
 11 magnitude of the problem? And why was
 12 government and Eastern Health more concerned
 13 with the risk of litigation than patient
 14 care"? I think we've seen that one before.
 15 And your first key message again is
 16 "Absolutely not, there was disclosure with
 17 patients and their families once test results
 18 became available. Eastern Health contacted
 19 each patient" and then I would suggest to you
 20 what we see following there is exactly the
 21 same wording that was contained -
 22 MR. WISEMAN:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. - in the backgrounder to the Inquiry.

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1 MR. WISEMAN:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And then you continue down, your third bullet
 5 says, "the Inquiry will address these
 6 concerns". Sorry, these questions, yes, "the
 7 Inquiry will address these questions.
 8 However, I must reiterate that all patients
 9 who were affected by the ER/PR test review
 10 were contacted. Media interviews were
 11 conducted in late 2005 and early 2006 and an
 12 ad was placed in the paper in late 2005.
 13 There was no attempt to cover up this issue.
 14 The focus was on the patients who were
 15 impacted". So, there seems to be recognition
 16 here that the Inquiry is to address these
 17 questions, however, it goes on to say, "I must
 18 reiterate that all patients who were affected
 19 by the test review were contacted". Is there
 20 anything, Mr. Wiseman, you would like to say -
 21 MR. WISEMAN:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. - about that?
 25 MR. WISEMAN:

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1 A. I mean, I -
 2 CHAYTOR, Q.C.:
 3 Q. Did that catch your attention at the time?
 4 MR. WISEMAN:
 5 A. - appreciate your point and in reflecting on
 6 it here now, several months later, you know,
 7 in the context of this discussion, I
 8 understand clearly why you'd be posing the
 9 question. I hadn't viewed it in that same
 10 light at the time of this briefing note, at
 11 the time I would have seen this briefing note.
 12 CHAYTOR, Q.C.:
 13 Q. So, you didn't take this up with Ms. Hennessey
 14 or anyone else in terms of whether or not
 15 that's something that you would, again
 16 thinking that this is a key message for you to
 17 address the public on, you didn't take up with
 18 them, well, would I really be standing up and
 19 saying that when that's an issue that is
 20 before the Inquiry and you know, we're asking
 21 whether or not that is the case?
 22 MR. WISEMAN:
 23 A. I understand your question, but I didn't -
 24 CHAYTOR, Q.C.:
 25 Q. But you didn't take it up at the time.

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1 MR. WISEMAN:
 2 A. - take it up at the time.
 3 CHAYTOR, Q.C.:
 4 Q. P-0105, page 33, please. So, the House is
 5 back in session, May 23, 2007, the day after
 6 the Inquiry is called and we can see you and
 7 Mr. Ball are having some back and forth again.
 8 I just wanted to bring you to page 36, I
 9 believe in this exhibit. Okay. And towards
 10 the bottom of that page, Mr. Wiseman, you're
 11 responding to--and if you want to just take a
 12 moment and read some of what Mr. Parsons, at
 13 this point actually is speaking. And he
 14 refers to the briefing of Eastern Health, I
 15 take it that means the briefing of the MHAS.
 16 It's says, "at the briefing of Eastern Health
 17 Care today", so that would be the 23rd. I
 18 thought the briefing had taken place the 22nd.
 19 Do you recall when it took place?
 20 MR. WISEMAN:
 21 A. Not exactly, no.
 22 UNKNOWN SPEAKER:
 23 Q. Both days.
 24 CHAYTOR, Q.C.:
 25 Q. Oh, it went on for two days, okay. That

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1 explains that. Thank you. Okay. So, we come
 2 then to this paragraph, you're stating that,
 3 in the middle of the page there now, Mr.
 4 Wiseman, "back in May 2005, when the Eastern
 5 Health Authority recognized that they had an
 6 issue here, they started to evaluate the
 7 extent to which it existed. When they
 8 realized that they had some 900-and-some-odd
 9 tests that had been done, that had been tested
 10 negative, at that particular time they pulled
 11 together, Mr. Speaker, a sub-committee of
 12 their ethics committee which consisted of
 13 people from the community - physicians and
 14 other who experts in this field - to look at
 15 how they might do that, how they started to
 16 deal with the issue that they had before them.
 17 One of the things, the advice that Eastern
 18 Health was given at that time, rather than
 19 create alarms among 900-and-some-odd people
 20 who may not have any change in their
 21 circumstance whatsoever, they decided at that
 22 time and the advice they received at that time
 23 from that group was to do the test first,
 24 rather than to alarm 900-and-some-odd people,
 25 to do the tests first. When the test results

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1 were done"--and I believe this is an issue
 2 that we spoke of yesterday or it came up in an
 3 answer to a question I put to you yesterday,
 4 Mr. Wiseman. The fact that you're referring
 5 to a sub-committee of an ethics committee as
 6 having given Eastern Health that advice. And
 7 that's not referred to in any of your briefing
 8 notes.
 9 MR. WISEMAN:
 10 A. No. One of the--as you may recall yesterday,
 11 I did comment on it with respect to another
 12 question you posed. The briefing I had on the
 13 May 15, that was a briefing that included
 14 people from Eastern Health and they were
 15 providing me with an overview of, you know,
 16 the sequence of events, what had taken place
 17 between the 2005 period and where we were at
 18 that point. But also too in terms of how they
 19 went about making the decisions that they
 20 made. And part of that discussion there, is
 21 sharing, you know, some of the things that
 22 they had done. They talked about the panel,
 23 they talked about having a sub-committee with
 24 the ethics committee involved in the
 25 discussion. And unfortunately, I inferred

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1 from that, that the sub-committee of the
 2 ethics committee was involved with that
 3 initial decision back in 2005. I have
 4 subsequently learned that the sub-committee of
 5 an ethics committee was put in place to deal
 6 with disclosure around deceased individuals in
 7 June of 2006.
 8 CHAYTOR, Q.C.:
 9 Q. Yes, so this is quite, yes, it was quite some
 10 time after.
 11 MR. WISEMAN:
 12 A. Which is quite some time after.
 13 CHAYTOR, Q.C.:
 14 Q. And it only pertained to the deceased
 15 patients.
 16 MR. WISEMAN:
 17 A. And only pertaining to deceased patients. And
 18 the issue around, as I understand it, the
 19 question put to the ethics to review was, you
 20 know, how to handle the issue of disclosure to
 21 the family members of the deceased patients.
 22 CHAYTOR, Q.C.:
 23 Q. Yes. And so this information, it's now a week
 24 later, a week later. And you've been through
 25 a presentation by Mr. Abbott at the Cabinet?

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1 MR. WISEMAN:
 2 A. Um-hm.
 3 CHAYTOR, Q.C.:
 4 Q. Briefing. And you've had numerous other
 5 discussions with the officials in your
 6 Department. But you were still of the
 7 understanding at that point in time that a
 8 subcommittee of the Ethics Committee had given
 9 the original advice not to notify the patients
 10 up front?
 11 MR. WISEMAN:
 12 A. And no one had corrected me on that and that
 13 was my understanding that I gleaned from that
 14 meeting on the 15th. And it wasn't until I
 15 think it was either the February or March
 16 preliminary discussion we had with the
 17 Commission that, you know, you had indicated
 18 to me in response to this issue that it was
 19 the evidence you had or the information you
 20 had was very different, so I -
 21 CHAYTOR, Q.C.:
 22 Q. And that's when you learned that -
 23 MR. WISEMAN:
 24 A. And I sense went to inquire as to when the
 25 subcommittee of the Ethics Committee was

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1 actually put in place.
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. WISEMAN:
 5 A. And that's when I found it wasn't until June
 6 of 2006 and what its intended purpose was.
 7 CHAYTOR, Q.C.:
 8 Q. And that's a fairly, it's fairly detailed what
 9 you say there because you describe it as a
 10 subcommittee of their Ethics Committee.
 11 MR. WISEMAN:
 12 A. Exactly.
 13 CHAYTOR, Q.C.:
 14 Q. And you're able to say who you understood the
 15 committee consists of, including people from
 16 the community. Where did you get that
 17 information?
 18 MR. WISEMAN:
 19 A. Because that issue of a subcommittee of an
 20 Ethics Committee would have come out, as I
 21 said, in Eastern Health sharing with me on May
 22 the 15th to what extent they have been
 23 involved in this discussion, who they have
 24 involved, who they have taken advice from and
 25 what advice they've gotten and sought. And as

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1 a part of that, they provided a commentary
 2 about an expert panel we've put in place, they
 3 provided commentary about putting together a
 4 subcommittee of their Ethics Committee. So
 5 that information would have been shared in
 6 May, the May 6th--May 15th of 2007. It was my
 7 error and my mistake to have interpreted that
 8 as being involved in the initial decision and
 9 not--in the initial decision being in 2005 and
 10 not in some subsequent decision that happened
 11 in 2006. Recognizing I'm having this
 12 discussion in 2007.

13 CHAYTOR, Q.C.:

14 Q. And just so that we're clear, it does continue
 15 on the next page, you make reference again in
 16 the middle of the page, "As I was saying, Mr.
 17 Speaker, in the summer of 2005 Eastern Health
 18 sought advice, sought advice from an expert
 19 group of people as to how to handle the 900
 20 and some odd test results that they had to
 21 deal with. The advice they were given at that
 22 time, rather than create undue anxiety, let's
 23 do the tests first and then we'll tell them."
 24 So it was your understanding and what you're
 25 telling the people of the province on that day

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1 was that ethical advice had been sought back
 2 in July of 2005?

3 MR. WISEMAN:

4 A. Yes.

5 THE COMMISSIONER:

6 Q. Ms. Chaytor, it's quarter to one. Do you want
 7 to break for lunch at this point?

8 CHAYTOR, Q.C.:

9 Q. Sure. Thank you.

10 THE COMMISSIONER:

11 Q. All right. We'll reconvene at 2. Thank you.
 12 (BREAK FOR LUNCH)

13 THE COMMISSIONER:

14 Q. Please be seated. Ms. Chaytor.

15 CHAYTOR, Q.C.:

16 Q. Thank you, Commissioner. Good afternoon, Mr.
 17 Wiseman.

18 MR. WISEMAN:

19 A. Good afternoon.

20 CHAYTOR, Q.C.:

21 Q. If we could have, please, P-0126, page 45?
 22 Now, Mr. Wiseman, this is the next briefing
 23 note that we have for you. And it's dated, I
 24 believe, May 24th, yes, May 24th, 2007. And
 25 this one is drafted by Dr. C. Bradbury. Who

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1 is Dr. Bradbury?

2 MR. WISEMAN:

3 A. She's one of the physicians involved with
 4 Department of Health and Community Services
 5 and she would have worked with Dr. Ed Hunt,
 6 one of the ADMs.

7 CHAYTOR, Q.C.:

8 Q. I take it she's not usually one of the
 9 drafters of your briefing notes?

10 MR. WISEMAN:

11 A. Generally not, no.

12 CHAYTOR, Q.C.:

13 Q. Okay. And do you know--the issue that's
 14 identified here, of course, is the ER/PR
 15 testing for breast cancer. And the background
 16 given is "Eastern Health St. John's site
 17 suspended the testing of ER/PR specimens for
 18 breast cancer patients in August, 2005. Since
 19 August, 2005 Mount Sinai has been testing new
 20 specimens as well as retesting all ER negative
 21 specimens reported between 1997 and 2005." Do
 22 you know the--and then it goes on with
 23 anticipated questions, "What is the current
 24 status of ER/PR testing in the province?"

25 MR. WISEMAN:

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1 A. Um-hm.

2 CHAYTOR, Q.C.:

3 Q. Can you tell us what lead up to Dr. Bradbury
 4 preparing this briefing note for you?

5 MR. WISEMAN:

6 A. I believe this came about as a result of my
 7 responding to a question in the House of
 8 Assembly with respect to when ER/PR testing
 9 was restarted at Eastern Health. And I had--
 10 and I just forget the phrase I used or my
 11 wording in the House of Assembly, but
 12 something to the effect that the ER/PR testing
 13 had resumed for the province. And when I made
 14 that statement in the House, I was advised
 15 after that that, in fact, had not happened and
 16 that Eastern Health at that particular point,
 17 and I just forget the date, but whenever I
 18 made that comment in the House, which was in
 19 or around the date of this note, I suspect,
 20 whatever date is on this note, so would have
 21 been sometime prior to this, that I found out
 22 through officials that Eastern Health had in
 23 February of '07 started to do the ER/PR
 24 testing initially for the city hospitals and
 25 not the entire province. And so I inquired

1 why and had a brief discussion with officials
 2 on that issue. And this would have come about
 3 as a result of a follow-up that would have
 4 taken place between people in Eastern Health
 5 and the other three Authorities with respect
 6 to, you know, that process of how, under what
 7 conditions that the testing would be expanded
 8 to include the other regions, if and when and
 9 how, and what kind of protocols would need to
 10 be in place for that to happen.

11 CHAYTOR, Q.C.:

12 Q. And what answers were you given when you made
 13 inquiries as to why the other regions weren't
 14 using Eastern Health for ER/PR testing?

15 MR. WISEMAN:

16 A. As I understand it from the conversation we
 17 had at the time was that they, Eastern Health
 18 wanted to start off with, you know, those that
 19 were in the city hospitals and to get them an
 20 opportunity to--because the lab, that
 21 particular section of the lab and the testing
 22 in that area of the lab had been discontinued
 23 since '05 and they wanted to start off with a
 24 lower volume to be able to ramp up to be able
 25 to at some point in time take over the process

1 A. I wouldn't have had any direct contact with
 2 Dr. Bradbury herself. I would have had
 3 discussion with the Deputy and to actually
 4 initiate a discussion to this effect.

5 CHAYTOR, Q.C.:

6 Q. Okay. And was she instructed then to contact
 7 the other regions and inquire of them as to
 8 whether their intention was to use Eastern
 9 Health?

10 MR. WISEMAN:

11 A. I'm not sure how that conversation would have
 12 unfolded between the Deputy and her, you know,
 13 but clearly, you know, wanted to have a
 14 discussion with the other regions around, you
 15 know, the plans for it, but more importantly,
 16 you know, in terms of that would actually take
 17 place.

18 CHAYTOR, Q.C.:

19 Q. And have you, yourself, had any discussions
 20 with the other three Regional Authorities on
 21 this issue?

22 MR. WISEMAN:

23 A. I believe--not directly with, not solely for
 24 this particular purpose. I recall sometime
 25 after this in a--in one of several meetings

1 for the entire province as they had been doing
 2 historically.

3 CHAYTOR, Q.C.:

4 Q. So it was a volume issue for Eastern Health or
 5 getting themselves up to speed so they could
 6 then take on the additional work?

7 MR. WISEMAN:

8 A. That was the--that was what I understood at
 9 the time.

10 CHAYTOR, Q.C.:

11 Q. Did you understand whether or not there were
 12 any reservations by the other Health
 13 Authorities as to whether or not they wanted
 14 to use Eastern Health for this service?

15 MR. WISEMAN:

16 A. That wasn't my understanding.

17 CHAYTOR, Q.C.:

18 Q. Okay. And is that still your understanding?

19 MR. WISEMAN:

20 A. It still is, yes.

21 CHAYTOR, Q.C.:

22 Q. Okay. Did you instruct Dr. Bradbury to take
 23 any action or make any contacts for you on
 24 this issue?

25 MR. WISEMAN:

1 I've had with the Board Chairs and CEOs which
 2 would have had a number of agenda items. I
 3 think this issue was a part of a discussion at
 4 one of those meetings, but it wasn't a meeting
 5 solely for this purpose, nor was it something
 6 that, you know, consumed a lot of discussion
 7 during that meeting.

8 CHAYTOR, Q.C.:

9 Q. And are you aware of a conference call that
 10 occurred around this date on this issue?

11 MR. WISEMAN:

12 A. Yes, I was, yes.

13 CHAYTOR, Q.C.:

14 Q. You are, okay. And what--did you take part in
 15 that conference call?

16 MR. WISEMAN:

17 A. I didn't, no.

18 CHAYTOR, Q.C.:

19 Q. And what do you understand--who took part in
 20 the conference call and what do you understand
 21 was discussed?

22 MR. WISEMAN:

23 A. As I understand it, it was the CEOs of the
 24 Authorities, together with the VPs of medical
 25 services. And they were talking about the

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1 transition back to Eastern Health to complete
 2 the ER/PR tests for their respective regions
 3 and some protocols that would need to be in
 4 place for that to happen and procedural kinds
 5 of things that would take place so that, you
 6 know, some of the, I think there were some
 7 issues with respect to the preparation of
 8 specimens and things like that that they
 9 needed to have changed as a part of the
 10 protocols in order to -
 11 CHAYTOR, Q.C.:
 12 Q. Fixation of specimens, that kind of thing?
 13 MR. WISEMAN:
 14 A. Yes, that was -
 15 CHAYTOR, Q.C.:
 16 Q. Fixation of the tissue?
 17 MR. WISEMAN:
 18 A. - one of the terminologies used. Those sorts
 19 of questions that there were going to be some
 20 changed protocols around those issues and that
 21 would then, that needed to happen before
 22 Eastern would be in a position to, you know,
 23 because that's part of the quality piece. And
 24 they wanted to have that done before they
 25 moved back in to St. John's.

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1 CHAYTOR, Q.C.:
 2 Q. And who reported back to you on the outcome of
 3 that discussion, that conference call?
 4 MR. WISEMAN:
 5 A. I suspect it would have been the Deputy. I
 6 can't recall exactly, but I suspect it would
 7 have been the Deputy.
 8 CHAYTOR, Q.C.:
 9 Q. And were you advised whether or not there were
 10 any concerns expressed by the other three
 11 Health Authorities as to the timeliness in
 12 which they were getting the information about
 13 protocols and fixation?
 14 MR. WISEMAN:
 15 A. I think there were a couple of issues, as I
 16 recall it, in respect to the other three
 17 Authorities at that particular point, if I
 18 remember correctly, hadn't been really engaged
 19 with Eastern Health very much with respect to
 20 the necessary changes in protocols. So this
 21 was kind of a, as I recall it, this
 22 teleconference that was held was what became
 23 known as, at least as I understood, to be one
 24 of the first of a series of discussions that
 25 needed to happen, but up to this particular

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1 point that discussion hadn't taken place.
 2 CHAYTOR, Q.C.:
 3 Q. And this is May 24th, 2007?
 4 MR. WISEMAN:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. Okay.
 8 THE COMMISSIONER:
 9 Q. Ms. Chaytor, while we're on this subject, only
 10 because we are and it's now in my mind, can we
 11 find out from the Minister whether or not
 12 there's some kind of requirement that boards
 13 use Eastern Health, that kind of relationship
 14 for testing?
 15 CHAYTOR, Q.C.:
 16 Q. Thank you, Commissioner. Yes, Minister, then,
 17 is there any requirement on the Authorities as
 18 to where they would send their tissues for
 19 processing?
 20 MR. WISEMAN:
 21 A. Not to my knowledge.
 22 CHAYTOR, Q.C.:
 23 Q. And under the new legislation there's included
 24 in the duties of the, or powers of the
 25 Minister, it includes in terms of provision of

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1 services, standards for services and included,
 2 if I recall in having read it, there's
 3 provision for you to give some direction in
 4 terms of where services are provided
 5 throughout the province. Is that your
 6 understanding, as well?
 7 MR. WISEMAN:
 8 A. There would be some services that would be
 9 considered, you know, provincial in nature.
 10 For example, in Eastern Health a lot of the
 11 provincial tertiary services are only provided
 12 within the Eastern Health Authority and more
 13 specifically at the Health Science Centre. So
 14 the, you know, Minister would and the province
 15 would probably dictate to the Authorities that
 16 there's certain levels of service that would
 17 only be provided at certain boards or certain
 18 locations. There are some services that are,
 19 you know, for example, right there's a piece
 20 around road ambulance services with respect to
 21 quality and medical control that's being
 22 managed by Eastern Health, for example, us
 23 that to illustrate where, you know, one
 24 Authority has a provincial mandate. The other
 25 three Authorities aren't involved in the

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1 delivery of programs that have a provincial
 2 mandate. As in as much as the legislation
 3 would dictate that, the Minister will decide
 4 or the government will decide and the Minister
 5 will advise that the, certain range of
 6 services will be provided as a provincial
 7 service and will be provided by one board.
 8 And you know, in terms of the discussions
 9 around whether or not, you know, surgical
 10 services, obstetrics or orthopaedic surgery
 11 would be carried out in XYZ hospital versus
 12 another, those sorts of directions would be
 13 provided by the Department. But in terms of a
 14 laboratory testing, that would be necessary
 15 regardless of what region you're in. If
 16 there's only one laboratory in the province
 17 that provides that level of testing, that
 18 would become a provincial service and we
 19 wouldn't, in this case, dictate the other
 20 Authorities would automatically have to send
 21 it to Eastern. The establishment of these
 22 provincial programs like this obviously
 23 envisages all boards participating in it at
 24 some point, but I don't know if it's inherent
 25 in the legislation that the Department would,

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1 in fact, dictate that kind of activity.
 2 CHAYTOR, Q.C.:
 3 Q. And are you aware of any optimal volume for
 4 Eastern Health in terms of performing these
 5 ER/PR tests?
 6 MR. WISEMAN:
 7 A. I'm not certain, I don't know.
 8 CHAYTOR, Q.C.:
 9 Q. The section in the Regional Health Authorities
 10 Act that I was thinking of is under
 11 Ministerial Direction, Section 5.1. "The
 12 Minister may give directions to an Authority,
 13 including directions for the purpose of (c)
 14 coordinating the work of the Authority with
 15 the programs, policy and work of the
 16 government of the provinces, the agencies of
 17 the government, other regional health
 18 authorities and other persons in the provision
 19 of health and community services in the
 20 province." So, Minister, I take it you don't
 21 have any intention at this point in time of
 22 saying to the Regional Authorities, even if
 23 you could give that direction, that they are
 24 to use Eastern Health for the ER/PR testing?
 25 MR. WISEMAN:

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1 A. As I understand it at this point in time
 2 today, Eastern Health has indicated that
 3 they're, because of volumes they're not in a
 4 position right now to take on the additional
 5 workload of the three Authorities.
 6 CHAYTOR, Q.C.:
 7 Q. So Eastern Health is still not a position to
 8 take that on?
 9 MR. WISEMAN:
 10 A. As I understand it today.
 11 CHAYTOR, Q.C.:
 12 Q. Okay.
 13 MR. WISEMAN:
 14 A. And if that's their judgment call, then that's
 15 obviously been made on the basis of their
 16 clinical judgment. I wouldn't dictate
 17 otherwise, if the other Authorities are using
 18 some other centre, I understand they're still
 19 continuing to send them to Mount Sinai in
 20 Toronto, and I wouldn't dictate otherwise if
 21 the Health Science has indicated that they're
 22 not ready to accept those.
 23 CHAYTOR, Q.C.:
 24 Q. Who gave you that understanding that Eastern
 25 Health is not in a position to accept the

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1 other samples at this stage?
 2 MR. WISEMAN:
 3 A. I just, in fact, that's an inquiry that I made
 4 very recently in terms of what the status of
 5 that was. And I have been advised by my
 6 Deputy recently that that's, they're still not
 7 in the position to assume that workload. And
 8 that's based on his discussion with Eastern
 9 Health.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, so that's Mr. Keats?
 12 MR. WISEMAN:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. And he learned that from somebody at Eastern
 16 Health?
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And that's very recent, meaning the past
 21 month?
 22 MR. WISEMAN:
 23 A. I would think, yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. I'm not sure if that answers your

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1 question, Commissioner?
 2 THE COMMISSIONER:
 3 Q. Thank you, yes.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. If I could have, please, Exhibit P-
 6 0129? Okay. And, Mr. Wiseman, this is the--
 7 this is an e-mail going from Betty Donahue to
 8 Angela Bull. Who is Betty Donahue?
 9 MR. WISEMAN:
 10 A. Betty is the Administrative Assistant to the
 11 Deputy Minister, and Angela Bull is my
 12 Administrative Assistant.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. And it's dated May 25th, 2007. And
 15 it's actually, it says, "Good morning, Emily,"
 16 and it's signed by "Thank you, Ross Wiseman."
 17 And this, I believe, is forwarding the letter
 18 to the editor that you wrote in response to
 19 the article we referred to this morning by Mr.
 20 Andre Picard regarding the ER/PR issue. And
 21 you're asking, you realize the length of the
 22 letter is longer than is generally accepted,
 23 "But given the seriousness of the situation I
 24 kindly ask that you consider printing it even
 25 as a guest column, perhaps?" And this is

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1 sending along your letter, then, that you
 2 wrote to the Globe and Mail in response to Mr.
 3 Picard's article. Page 2 then of that
 4 Exhibit.
 5 MR. WISEMAN:
 6 A. Um-hm.
 7 CHAYTOR, Q.C.:
 8 Q. So, Mr. Wiseman, why did you feel compelled to
 9 submit this letter to the editor of the Globe
 10 and Mail?
 11 MR. WISEMAN:
 12 A. There had been a publication in the Globe
 13 newspaper, an article in the Globe and Mail by
 14 this reporter that, I don't know if the
 15 content is here or not, that we took some
 16 exception to and believed that we wanted to
 17 provide some either context for or commentary
 18 on some of the content of that article and to
 19 reaffirm some of the already espoused
 20 positions of government up to this point.
 21 CHAYTOR, Q.C.:
 22 Q. And did you write this letter yourself?
 23 MR. WISEMAN:
 24 A. No, I didn't.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And who wrote it for you?
 2 MR. WISEMAN:
 3 A. I would take responsibility for it, but I
 4 didn't--it was crafted -
 5 CHAYTOR, Q.C.:
 6 Q. You signed off on it, I take it?
 7 MR. WISEMAN:
 8 A. Yes, exactly. It would have been crafted by
 9 the communications officials.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. And your communication official at that
 12 time, Tansy Mundon, is that -
 13 MR. WISEMAN:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. That's who would have drafted it for you,
 17 okay.
 18 MR. WISEMAN:
 19 A. I suspect that this would have--that would be
 20 consistent with past practice, so.
 21 CHAYTOR, Q.C.:
 22 Q. And again now, Mr. Wiseman, this is May 24th,
 23 2007. So this is being written or at least
 24 submitted two days after the Inquiry has been
 25 called?

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1 MR. WISEMAN:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. We come down to the paragraph, "Eastern
 5 Health's first priority was the patients
 6 affected."
 7 MR. WISEMAN:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. "There was full disclosure with the patients
 11 and their families once test results became
 12 available beginning in October, 2005." And
 13 again, it goes on with the paragraph of "Each
 14 patient affected by their test review was told
 15 directly or through their family physician,
 16 one of three things." And we've seen
 17 reference to those three things before. And I
 18 take it based on our question and answer
 19 session this morning, Mr. Wiseman, you realize
 20 now that that--that's not the case?
 21 MR. WISEMAN:
 22 A. Exactly, yes.
 23 CHAYTOR, Q.C.:
 24 Q. The next paragraph, "Contrary to Mr. Picard's
 25 statement." That continues on. "Contrary to

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1 Mr. Picard's statement that information was
 2 only released publicly in December, 2006, I
 3 direct him to media reports as far back as
 4 October, 2005. Eastern Health publicly
 5 responded in an open and transparent manner to
 6 media inquiries on this issue and placed
 7 newspaper ads in local papers to notify
 8 individuals about the retesting and to provide
 9 a number where those impacted could call for
 10 further information." Mr. Wiseman, in terms
 11 of your statement that Eastern Health publicly
 12 responded in an open and transparent manner to
 13 media inquiries on this issue, do you stand by
 14 that statement?
 15 MR. WISEMAN:
 16 A. Not as open as they should have been in
 17 December of 2006.
 18 CHAYTOR, Q.C.:
 19 Q. And again, you're writing this, though, May
 20 24th, 2007?
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And at that point in time you too felt that
 25 the process hadn't perhaps been as open and

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1 transparent as it should have been?
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Then to continue on that paragraph, "However,
 6 one piece of information was not provided by
 7 Eastern Health at the time of briefing, the
 8 number of women whose tests had changed, but
 9 did not require a different treatment regime.
 10 Should Eastern Health have disclosed the fact
 11 that 317 patients test results converted from
 12 ER negative to ER positive, and that 117
 13 required a different treatment regime? As the
 14 Minister in Government that is committed to
 15 openness and transparency, I believe it should
 16 have been and would likely have avoided the
 17 confusion in the media in recent days over
 18 this issue", and I take it from what you've
 19 told us in your evidence, that's still your
 20 position?
 21 MR. WISEMAN:
 22 A. It is, yes.
 23 CHAYTOR, Q.C.:
 24 Q. Then you go on to refer to the fact that
 25 you've announced that there will be a judicial

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1 inquiry which will endeavour to understand
 2 what has happened, and then in the penultimate
 3 paragraph, this increased funding, you talk
 4 about, "It's true there were cutbacks in
 5 health care by the previous Liberal
 6 administration in our province, however, our
 7 Government has strengthened our provincial
 8 health care system by increasing our health
 9 care budget in each of the last three years.
 10 This increased funding has enabled Eastern
 11 Health to implement a quality assurance
 12 program for ER/PR testing which consists of a
 13 new lab with new equipment and dedicated
 14 staff, including technologists and
 15 pathologists. This is an entirely new
 16 approach than existed in the past. Eastern
 17 Health has created a Centre of Excellence. We
 18 were able to pool our provincial resources of
 19 oncologists and pathologists to provide the
 20 expertise to ensure the highest standards of
 21 quality for the cancer care program. We have
 22 also invested significantly in the area of
 23 cancer prevention and treatment throughout the
 24 province". Mr. Wiseman, what are you
 25 referring to in terms of consists of a new lab

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1 with new equipment and dedicated staff,
 2 including technologists and pathologists?
 3 MR. WISEMAN:
 4 A. New lab, meaning they have a new dedicated
 5 area of the lab. As I understand it, they
 6 have an area of that lab that's been dedicated
 7 for ER/PR testing. I understood that there
 8 was some new equipment purchased for that
 9 area, and the dedicated staff is something
 10 that we've already talked about in some
 11 previous briefings notes, together with the
 12 technologists and the pathologists that are
 13 there.
 14 CHAYTOR, Q.C.:
 15 Q. And in terms of the investment in the
 16 pathologists, I understand that at some point
 17 in time the pathologists did receive the
 18 oncology stipend?
 19 MR. WISEMAN:
 20 A. They did.
 21 CHAYTOR, Q.C.:
 22 Q. Do you know when that was?
 23 MR. WISEMAN:
 24 A. It was announced some time in mid May,
 25 effective some time in February of '07, I

1 think was the timelines.
 2 CHAYTOR, Q.C.:
 3 Q. Maybe May 18th?
 4 MR. WISEMAN:
 5 A. I'm not sure of the exact date, but it was
 6 around the middle of May.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and we'll come to that then because I do
 9 have some correspondence on that that I can
 10 direct you to.
 11 MR. WISEMAN:
 12 A. Uh-hm.
 13 CHAYTOR, Q.C.:
 14 Q. So, Mr. Wiseman, in looking at his article
 15 now, I take it that there are a couple of
 16 things mostly around the communication piece
 17 or the disclosure piece that you are less than
 18 confident in asserting now, that you would not
 19 -- if you were to write the letter today, you
 20 probably would not have written, is that fair?
 21 MR. WISEMAN:
 22 A. I wouldn't have said that all of the patients
 23 had been contacted, very clearly, no.
 24 CHAYTOR, Q.C.:
 25 Q. And perhaps would have chose different wording

1 and they came back to the Department
 2 indicating that based on the information that
 3 they reviewed and the documentation that was
 4 made available to them, they would not be able
 5 to do that reconciliation, and it was at that
 6 moment that we moved forward and started to
 7 assembly a group of people from the Centre for
 8 Health Information. So that was for some time
 9 during the first week or so of June, in and
 10 around that time.
 11 CHAYTOR, Q.C.:
 12 Q. And it is being written after the inquiry has
 13 been called where the Government has had
 14 misgivings in terms of the patient contact,
 15 and it is being written after you've heard in
 16 the media patients taking issue with whether
 17 or not they were contacted?
 18 MR. WISEMAN:
 19 A. Yes, that's true.
 20 CHAYTOR, Q.C.:
 21 Q. Did you write -- were you instructed to write
 22 this letter or did you do that on your own
 23 initiative? Who brought it to your attention?
 24 MR. WISEMAN:
 25 A. The communications people would have -- what

1 than "responded in an open and transparent
 2 manner to media inquiries"?
 3 MR. WISEMAN:
 4 A. I would frame that very different, yes.
 5 CHAYTOR, Q.C.:
 6 Q. Yes, okay. At what point in time did you lose
 7 confidence in those statements in the letter?
 8 MR. WISEMAN:
 9 A. The issue around the numbers was probably some
 10 time in the first part of June that I remember
 11 having a conversation with Robert Thompson,
 12 who was doing some work, and he brought into
 13 question some of the -- at least on an
 14 exchange of some -- either verbal
 15 communications or some e-mails that he had
 16 from Eastern Health where they're now starting
 17 to qualify some of the numbers, and it
 18 prompted us to -- there was a couple of
 19 officials from the Board Services Division of
 20 the Department who went into Eastern Health to
 21 try to pull together the documentation
 22 associated with the tracking of this contact
 23 that had been made, and to gain an
 24 understanding of exactly -- to try to validate
 25 this assertion that everybody was contacted,

1 happened in the -- as part of the
 2 communications function, you know, they would
 3 have -- at the beginning of each day would
 4 have pulled together any media coverage or any
 5 news coverage at all of events with respect to
 6 the health system, not just this issue, but a
 7 variety of issues, and as a part of the normal
 8 part of their daily function. So any article
 9 that would have been printed around health, it
 10 would be gathered by them and scanned, and
 11 for, you know, either content accuracy or
 12 something that might require some kind of
 13 follow up, and that's how this would have come
 14 to my attention.
 15 CHAYTOR, Q.C.:
 16 Q. So you weren't instructed by anyone else to
 17 write the letter, it was brought to your
 18 attention by your own Director of
 19 Communications?
 20 MR. WISEMAN:
 21 A. It was, and -- that's how I would assume it
 22 happened because that's how it normally
 23 happens, it's a daily routine, and then from
 24 that there would be some discussions with
 25 myself in and around it. There may also have

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1 been, and I don't know if it happened here,
 2 but sometimes there may be some discussions
 3 with the Communications Branch of Government.
 4 That may or may not have happened, I don't
 5 know. So that would be the normal process.
 6 CHAYTOR, Q.C.:
 7 Q. Communications Branch with Government meaning
 8 the Central Agency, is it?
 9 MR. WISEMAN:
 10 A. Exactly, yes.
 11 CHAYTOR, Q.C.:
 12 Q. If we could have P-0216, please. Mr. Wiseman,
 13 this is a series of em--mails again and I'll
 14 just scroll you down to the first, and this e-
 15 mail is from your Director of Communication,
 16 Tansy Mundon, being sent May 24th, 2007. The
 17 recipients are George Tilley, John Abbott,
 18 Ross Wiseman, yourself, and copied to Susan
 19 Bonnell, and the subject is, "Latest draft of
 20 letter to editor", the importance is high, and
 21 it's indicated to be high priority.
 22 "Minister, John, George, here's the latest
 23 draft of letter. Since Elizabeth is okay with
 24 us sending tomorrow rather than tonight, I
 25 will contact the Globe in the morning to see

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1 if we can get permission to submit a letter of
 2 this length. If not, I will have to cut it
 3 significantly. Otherwise, she is fine with
 4 it. Thanks, Tansy". Now who would Elizabeth
 5 be?
 6 MR. WISEMAN:
 7 A. I would assume it would have been Elizabeth
 8 Matthews.
 9 CHAYTOR, Q.C.:
 10 Q. So it would appear then that Central
 11 Communications -- the Director of
 12 Communication for the Premier is involved in
 13 signing off on this letter?
 14 MR. WISEMAN:
 15 A. It would appear, yes.
 16 CHAYTOR, Q.C.:
 17 Q. And this is being written again by your
 18 Director of Communication to yourself, Mr.
 19 Tilley, John Abbott, and copied to Eastern
 20 Health's Director of Communications, Susan
 21 Bonnell?
 22 MR. WISEMAN:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Why would that be? Why would Eastern Health,

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1 George Tilley, and Susan Bonnell, why would
 2 they be involved in this?
 3 MR. WISEMAN:
 4 A. Again I -- I don't know the specifics of the
 5 discussion that would have taken place between
 6 these parties at this particular time. I
 7 would assume that it would have been to ensure
 8 that any statements in here about Eastern
 9 Health, that there was no inaccuracies, and
 10 wanted to make sure that we were, you know, on
 11 the -- if there was an inaccurate statement
 12 here, then Eastern Health would have an
 13 opportunity to make some comment about it, or
 14 if there was something that needed to be said
 15 that wasn't said in the letter in response to
 16 the article -- because I assume the article in
 17 the Globe and Mail, and I don't have it in
 18 front of me here, would have made some comment
 19 both about maybe Government, but also comments
 20 about Eastern Health. So if there was to be
 21 any addition to that, then Eastern Health
 22 would be given an opportunity to make comment.
 23 CHAYTOR, Q.C.:
 24 Q. Did you understand that Eastern Health were
 25 also preparing their own letter?

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1 MR. WISEMAN:
 2 A. I may or may not have been. I don't recall
 3 much around -- in the way of discussion around
 4 this particular piece of correspondence. I
 5 recall the conversation about the
 6 correspondence, that we were responding to the
 7 article in the paper, but I don't recall that
 8 there was much of a discussion around what
 9 else might be happening from Eastern Health's
 10 perspective.
 11 CHAYTOR, Q.C.:
 12 Q. But you did understand, obviously, because
 13 this e-mail is forwarded to you and George
 14 Tilley, so you understood that they were
 15 involved in reviewing the draft of your
 16 letter?
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And then the e-mail -- there's an e-mail back,
 21 or an e-mail from George Tilley at the top of
 22 the page at 7:23 p.m, the same date, May 24th,
 23 2007, and he sends this to Susan Bonnell,
 24 Heather Predham, Oscar Howell, "Forwarding
 25 latest draft of letter to editor". Importance

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1 high, and there's an attachment. Mr. Tilley
 2 is writing, "Have a look at to identify any
 3 factual errors, recognizing that they may need
 4 to send in the -- that they may send in the
 5 morning". So Mr. Tilley is then forwarding it
 6 on to others in his organization to review for
 7 any factual errors?
 8 MR. WISEMAN:
 9 A. It would appear, yes.
 10 CHAYTOR, Q.C.:
 11 Q. And that doesn't surprise you, you understood
 12 that was happening?
 13 MR. WISEMAN:
 14 A. Well, I -- I wouldn't have necessarily
 15 understood it was happening in advance of it
 16 happening, but I understood -- when I would
 17 have seen this, I would have understood the
 18 process and would have recognized that it
 19 would be a prudent and reasonable thing to do.
 20 CHAYTOR, Q.C.:
 21 Q. If we could have, please, P-0126, page 38.
 22 This is another Cabinet Directive, Mr.
 23 Wiseman, and it appears it's a week later, a
 24 week or so after -- the last one was, I
 25 believe, May 17th, and this is now May 25th,

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1 2007. This Cabinet Directive, first of all,
 2 do you recall being at this meeting of
 3 Cabinet? It appears to be a recommendation on
 4 briefing notes circulation.
 5 MR. WISEMAN:
 6 A. Yes, I can -- I haven't missed any Cabinet
 7 meetings, so I must have been there for this
 8 one.
 9 CHAYTOR, Q.C.:
 10 Q. And this goes on to say, "Approval was given
 11 for the following procedure for circulation of
 12 briefing notes effective immediately.
 13 Ministerial briefing notes, all briefing notes
 14 prepared for a Minister, whether prepared for
 15 the Minister's orientation, general
 16 information, Cabinet meeting, House of
 17 Assembly, to make a decision to attend a
 18 meeting, to attend a federal/provincial
 19 conference, or any other similar purpose,
 20 shall be signed or initialled by the Minister
 21 after he or she reviews it. Two, a copy of
 22 the signed initialled briefing note shall be
 23 maintained in the Minister's files by the
 24 Secretary to the Minister. Three, the files
 25 shall be appropriately indexed and stored so

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1 that retrieval can be made without
 2 difficulty", and then it also deals with
 3 briefing notes circulated to the Premier's
 4 Office by Cabinet Secretariat, and it says,
 5 "All briefing notes prepared by a department
 6 for Cabinet Secretariat to circulate to the
 7 Premier's Office or prepared by Cabinet
 8 Secretariat, substantially based on
 9 information from a department, shall also be
 10 provided to the Minister", and it goes on from
 11 there about the Minister signing or
 12 initialling the briefing note, "And where
 13 possible, the signature or initials of the
 14 Minister will be obtained before the note is
 15 circulated, but it does recognize that the
 16 timely preparation of a note may not permit
 17 the obtaining of a signature or initials
 18 before Cabinet Secretariat forwards it to the
 19 Premier's Office. It's important for
 20 timeliness and responsiveness that
 21 departmental officials respond to requests
 22 from Cabinet Secretariat for information in
 23 the timelines requested". So, Mr. Wiseman,
 24 did this briefing note originate out of what
 25 was brought up by Mr. Osborne following the

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1 Cabinet briefing of May 17th?
 2 MR. WISEMAN:
 3 A. Yes, it was.
 4 CHAYTOR, Q.C.:
 5 Q. So this was to address the concerns that Mr.
 6 Osborne had of not having seen the August
 7 18th, 2006, briefing note on the ER/PR issue?
 8 MR. WISEMAN:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. Is this still the practice, is this
 12 still current?
 13 MR. WISEMAN:
 14 A. It's still current, yes.
 15 CHAYTOR, Q.C.:
 16 Q. It's still current, and prior to this, what
 17 was happening, what was the practice prior to
 18 this?
 19 MR. WISEMAN:
 20 A. Briefing notes would have been prepared by
 21 officials in the Department. There might have
 22 been -- there's a number of reasons for
 23 briefing notes being prepared. For example, I
 24 already gave evidence earlier that the
 25 briefing notes prepared for the Cabinet or for

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1 the Health briefing last year, any individual
 2 update, they would have updated and inserted
 3 it in the book and not necessarily have vetted
 4 it through me personally, or that if the
 5 Premier's Office of Cabinet Secretariat was
 6 looking for a note on a particular topic or
 7 subject, it wouldn't be uncommon for
 8 department officials to provide that
 9 information directly to Cabinet Secretariat,
 10 or Treasury Board, or the Premier's Office for
 11 that matter, and information emanating out of
 12 the Department not necessarily being signed
 13 off by the Minister. So there was a -- that
 14 was generally the practice prior to this
 15 directive.
 16 CHAYTOR, Q.C.:
 17 Q. And certainly the practice in your Department,
 18 I take it now, you haven't had any difficulty
 19 to your knowledge with this practice being
 20 followed?
 21 MR. WISEMAN:
 22 A. To my knowledge, no.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. If I could have then, P-0126, page 55.
 25 I believe, Mr. Wiseman, this might be your

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1 next briefing note. Scroll down here and look
 2 at the date. This one is drafted again by
 3 Beverley Griffiths and approved by Moira
 4 Hennessey, and the date is May 28th, 2007.
 5 This one, I don't see -- this doesn't appear
 6 to have been signed off, or at least the copy
 7 that we have here is not signed off, but that
 8 directive would have come into effect, I would
 9 take it, immediately?
 10 MR. WISEMAN:
 11 A. Uh-hm.
 12 CHAYTOR, Q.C.:
 13 Q. Could it be that we have a copy that's not
 14 signed off?
 15 MR. WISEMAN:
 16 A. I wouldn't know. You may, and I can't comment
 17 as to why it wouldn't be.
 18 CHAYTOR, Q.C.:
 19 Q. We do have one in March of this year where
 20 it's clearly been signed off.
 21 MR. WISEMAN:
 22 A. Uh-hm.
 23 CHAYTOR, Q.C.:
 24 Q. But this one and the one that follows after
 25 it, there's no indication of that.

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1 MR. WISEMAN:
 2 A. I wouldn't be able to comment as to why that
 3 would be.
 4 CHAYTOR, Q.C.:
 5 Q. I just take you through a few points then in
 6 this briefing note, and these are basically
 7 the same points that we've seen carried over
 8 from one briefing note to another.
 9 MR. WISEMAN:
 10 A. Uh-hm.
 11 CHAYTOR, Q.C.:
 12 Q. So the first key message, we've already talked
 13 about, about the fact that there haven't been
 14 full disclosure, and the inquiry addressing
 15 these questions, I believe we brought that up
 16 with respect to another briefing note. So I'm
 17 not sure that there's a whole lot of new
 18 content in this briefing note. Is there
 19 anything in particular happening with the
 20 issue at this point in time that you would
 21 have been updated on?
 22 MR. WISEMAN:
 23 A. After the inquiry was called, you know, my
 24 sense was that there was a period of time when
 25 there was no new information being added.

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1 Things started to change a bit after Robert
 2 Thompson started to do some of his work in
 3 early June, and then that's when the
 4 reconciliation of the data that was within
 5 Eastern Health with respect to the individuals
 6 who were tested, the numbers, and the contact
 7 information, that kind of reconciliation of
 8 the communications that occurred, that there
 9 was some -- you know, from that point when the
 10 Commission was appointed, up to that
 11 particular point, there was very little new
 12 information coming into the office with
 13 respect to this issue.
 14 CHAYTOR, Q.C.:
 15 Q. But I take it, you were asking, in any event,
 16 for updated briefing notes on a regular basis?
 17 MR. WISEMAN:
 18 A. Well, some of them -- in terms of my asking
 19 for them, some of them, they were -- the
 20 practice is each briefing note that gets
 21 initiated is not automatically initiated at my
 22 request. Officials would -- if there is
 23 something that needs to be added or changed to
 24 provide current status, they would
 25 automatically do it as a matter of course, so

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1 I may not necessarily have asked for this one
 2 or any subsequent one.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. If we could have, please, P-0230, page
 5 one. Mr. Wiseman, this is another e-mail
 6 exchange and if we scroll down, it's only one
 7 page, and the original message comes from
 8 Tansy Mundon, again your Director of
 9 Communication, and she writes to Robert
 10 Thompson, and to yourself, Ross Wiseman, and I
 11 take it at this point in time -- what's Mr.
 12 Thompson's role at this point in time? I
 13 should tell you this is June 6th.
 14 MR. WISEMAN:
 15 A. It was around the end of May, first part of
 16 June, maybe it would have been June 1st or May
 17 31st, that Mr. Thompson was appointed to head
 18 up a task force looking at adverse events in
 19 Health and to look at the communications
 20 around adverse events within Health, and as a
 21 part of that role as well, or as a part of --
 22 in addition to that, act as a support to
 23 Government in preparation for this inquiry,
 24 and as a part of his -- looking at both the
 25 adverse -- because there's a relationship, he

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1 would have been involved in this
 2 reconciliation process I talked about earlier.
 3 CHAYTOR, Q.C.:
 4 Q. And is Mr. Abbott still your Deputy Minister
 5 at this point in time?
 6 MR. WISEMAN:
 7 A. By this time, Mr. Thompson is the acting
 8 Deputy Minister in Health and Community
 9 Services.
 10 CHAYTOR, Q.C.:
 11 Q. So he's filling both roles.
 12 MR. WISEMAN:
 13 A. Both roles.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. So if we start in the middle of the
 16 page here, the e-mail is from Tansy to Mr.
 17 Thompson and to yourself and it's copied then
 18 to Moira Hennessey and, again, it's June 6 at
 19 4:08 P.M. "For your review, Minister/Robert,
 20 further to the exchange in Question Period
 21 today where Gerry Reid said that Eastern
 22 Health is misleading the public in its full-
 23 page ad by saying that they informed all
 24 patients and their doctors of their individual
 25 test results." Sorry, let's try that again.

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1 "Gerry Reid said that Eastern Health is
 2 misleading the public in its full-page by
 3 saying that they informed all patients and
 4 their doctors of their individual test
 5 results. Deanne Fleet asked for a response
 6 from government. She was unable to wait for
 7 the Minister to do an interview, but I
 8 indicated that we would send a statement to
 9 their producer. Here's what I'm suggesting.
 10 Please advise if you are okay with this.
 11 Thanks. Tansy." And then Tansy writes--and
 12 this appears to be pretty well verbatim out of
 13 some of those briefing notes that I showed
 14 you, as well as the backgrounder to the
 15 inquiry.
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And she, in fact, says, "That's contained in
 20 the backgrounder of the news release of May
 21 22nd. Eastern Health contacted each patient
 22 who was affected." And then it goes on from
 23 there and, of course, we've looked at that
 24 before. And, Mr. Wiseman, you're back to
 25 Tansy at the top of the page, "Ross Wiseman to

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1 Tansy Mundon, June 6, 2007, 4:17 P.M," so
 2 fairly promptly, less than ten minutes, you
 3 say "Okay." And again, Mr. Wiseman, on June
 4 6th you seem to have no hesitation in saying
 5 that it's okay to go ahead and continue to say
 6 that all the patients--that "Eastern Health
 7 contacted each patient who was affected."
 8 MR. WISEMAN:
 9 A. As I said earlier, up to this point I'm still
 10 relying on the information coming from Eastern
 11 Health, and that's their assertion, and some
 12 degree of trust in that assertion.
 13 CHAYTOR, Q.C.:
 14 Q. And if we could have P-0229, please, page ten.
 15 And this is Mr. Reid speaking in the House,
 16 and the date--I guess we should go back to the
 17 beginning, but I understand the date is the
 18 date that Tansy had indicated, June 6th.
 19 THE COMMISSIONER:
 20 Q. Is this June 5th or June 6th?
 21 CHAYTOR, Q.C.:
 22 Q. I don't know. June 6th, I believe. Here we
 23 go, yes, June 6th. And if we could go then
 24 again, please -
 25 UNKNOWN SPEAKER:

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1 Q. It's located at page seven, Commissioner, of
 2 the exhibits.
 3 THE COMMISSIONER:
 4 Q. Thank you.
 5 CHAYTOR, Q.C.:
 6 Q. Page seven?
 7 THE COMMISSIONER:
 8 Q. There are two days together there.
 9 CHAYTOR, Q.C.:
 10 Q. There are. There's two together in this
 11 exhibit, yes.
 12 THE COMMISSIONER:
 13 Q. Thank you.
 14 CHAYTOR, Q.C.:
 15 Q. We're starting at page seven, and if we could
 16 have page ten then, please? And this is
 17 perhaps the reference that Tansy was referring
 18 to. Mr. Speaker, Eastern Health claims in
 19 this very ad that all patients whose samples
 20 were being retested were notified. Now the
 21 Minister and the Premier know that statement
 22 is both false and misleading because they were
 23 not all notified, I say to the Minister. So I
 24 assume that's what Tansy is referring to and
 25 that had come up in the House on that date.

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1 MR. WISEMAN:
 2 A. Yes. It must be, yes.
 3 CHAYTOR, Q.C.:
 4 Q. If we could have 0227, please, page one. And,
 5 I take it, you recall that exchange, do you?
 6 MR. WISEMAN:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Mr. Wiseman, you recall that exchange with Mr.
 10 Reid in the House on the ad or with respect to
 11 this issue?
 12 MR. WISEMAN:
 13 A. Not necessarily. I acknowledge Hansard as
 14 being a record of the proceedings.
 15 CHAYTOR, Q.C.:
 16 Q. Don't take issue with it.
 17 MR. WISEMAN:
 18 A. I don't know--if it's in Hansard, I won't take
 19 exception.
 20 CHAYTOR, Q.C.:
 21 Q. Now again, this is an e-mail exchange at 0227
 22 and it's from Susan Bonnell, who we understand
 23 was the Director of Communication for Eastern
 24 Health, to Tansy Mundon, your then Director of
 25 Communication, June 1, 2007, at 10:01 A.M.,

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1 and it's forwarding a Message to Our Patients
 2 advertising. And Susan indicates that "We're
 3 still in draft, but this is basically it.
 4 This is going in all Transcon papers and in
 5 The Telegram." Mr. Wiseman, did you know that
 6 the draft ad was run through your
 7 communications person?
 8 MR. WISEMAN:
 9 A. I can't recall if it ever came to my
 10 attention, but if it was a--it wouldn't
 11 necessarily have been brought to my attention.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. Does it seem unusual that that would be
 14 the case, that Susan Bonnell would run this
 15 through Tansy Mundon.
 16 MR. WISEMAN:
 17 A. Given the--in a normal course of events, you
 18 know, the communication ads ran by Eastern
 19 Health, or any other health authority,
 20 wouldn't necessarily be run through the
 21 Director's office in the Department of Health
 22 and Community Services, but in light of the
 23 heightened sensitivity around this issue, it's
 24 not surprising this happened in this instant.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. If we could have 0226, please? If we
 2 could just go back to 0227, sorry, for a
 3 moment.
 4 MR. WISEMAN:
 5 A. Sure.
 6 CHAYTOR, Q.C.:
 7 Q. Scroll down to the bottom. And there's some
 8 other names on this page, Minister, "From
 9 Angela Benmore, June 1, 2007, and to C.
 10 Chaplin at Bristol Group and copied to Susan
 11 Bonnell, A Message to our Patients
 12 advertising, and Angela Lawrence, Graphic
 13 Artist, Web Designer, Strategic
 14 Communications." Do you know who any of those
 15 individuals are?
 16 MR. WISEMAN:
 17 A. C. Chaplin, I would assume--I don't know for a
 18 fact, unless there's maybe many people with
 19 that name, it might be the former Director of
 20 Communications with Health and Community
 21 Services.
 22 MR. WISEMAN:
 23 A. Carolyn Chaplin. I understand -
 24 CHAYTOR, Q.C.:
 25 Q. And I believe there may be evidence to that

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1 effect later that she did go with Bristol
 2 Group.
 3 MR. WISEMAN:
 4 A. I understand she went to Bristol Group.
 5 CHAYTOR, Q.C.:
 6 Q. Yes.
 7 MR. WISEMAN:
 8 A. The other individuals, I wouldn't know who
 9 they are. Susan Bonnell, I recognize but the
 10 other lady I don't.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. So we'll take that up with others then,
 13 and that's just a copy of the ad there on the
 14 screen now.
 15 MR. WISEMAN:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And we'll come back to that. Okay, if we
 19 could now then to 0226, please. Okay. And
 20 this is Tansy on June 1, 2007, at 11:50 A.M.,
 21 forwarding on--and we can't tell the
 22 recipients. It's not--no recipients indicated
 23 here, but we can tell who some of them must
 24 have been by the reply that we get, but it
 25 says, "Please see attached ad developed by

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1 Eastern Health which they plan to put in
 2 Saturday's Telegram, along with community
 3 newspapers next week. Their purpose is to
 4 advise the public that patients were informed
 5 of ER/PR testing throughout the process.
 6 Please advise if you have any concerns ASAP."
 7 So Tansy is actually indicating that the very
 8 purpose for the ad is to advise the public
 9 that patients were indeed informed. And,
 10 again, we can't tell who the recipients are,
 11 but we can see that there's a response from
 12 Josephine Cheeseman, and it goes to Carmel
 13 Turpin, Elizabeth Matthews, Moira Hennessey,
 14 Robert Thompson. It goes to yourself, Ross
 15 Wiseman, and to Tansy Mundon and, again, it's
 16 the same date, 12:09 P.M., a Message to Our
 17 Patients advertisement and she's saying "Ditto
 18 to Elizabeth's comments." And Elizabeth had
 19 responded at 11:59, Elizabeth Matthews, saying
 20 "My only comment would be, in the second
 21 paragraph I would add '...tests helped
 22 determine treatment options for breast cancer
 23 patients after diagnosis has been given' or
 24 some words to that effect. Second, I don't
 25 know if this is possible, but is there some

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1 way of saying that 'although the media were
 2 not given information about the patients whose
 3 treatments was not affected, we did ensure
 4 that all patients were fully informed.' I
 5 think this is a solid point that is being
 6 lost. Otherwise, I think it is a very good
 7 ad." Now, Mr. Wiseman, Elizabeth Matthews is
 8 the Director of Communications for the
 9 Premier?
 10 MR. WISEMAN:
 11 A. Yes, she is. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And it appears you received this e-mail
 14 exchange.
 15 MR. WISEMAN:
 16 A. Uh-hm.
 17 CHAYTOR, Q.C.:
 18 Q. So this ad was being passed through the
 19 Director of Communications for the office of
 20 the Premier and through yourself.
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And perhaps we'll go back now, please, to
 25 0227, page three.

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1 MR. WISEMAN:
 2 A. Uh-hm.
 3 CHAYTOR, Q.C.:
 4 Q. And this is the ad which we understand was
 5 placed and it's a Message to Our Patients, and
 6 in big type-set, larger type-set, we have, "We
 7 have always been up front and open with our
 8 patients. An impression has been left with
 9 the public that patients affected by the ER/PR
 10 review were not given their own health
 11 information. This is not true." And then it
 12 continues down to "Our first priority is and
 13 always has been quality patient care. That's
 14 why in 2005 when these issues came to our
 15 attention, we acted immediately to put
 16 safeguards in place." And it talks about a
 17 number of measures that were undertaken. "We
 18 called all patients whose samples were being
 19 retested. We talked about the issue in the
 20 media. We posted information on our website.
 21 We set up an inquiries line so that every
 22 patient's concern could be heard. We informed
 23 all patients and their doctors of their
 24 individual test results, and they invited
 25 international experts into their lab to review

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1 the process." So, Mr. Wiseman, my question, I
 2 guess, is simple, that why in June of 2007
 3 after your government has seen fit to call
 4 this inquiry with a mandate that includes
 5 investigation of the timelines and
 6 appropriateness of communications to patients
 7 and the public, why is the government involved
 8 in helping to draft public communications for
 9 Eastern Health on this issue?
 10 MR. WISEMAN:
 11 A. There's still an element of trust between
 12 ourselves and Eastern Health, and they were
 13 continuously reaffirming in a very strong way
 14 that they had, in fact, contacted all of the
 15 patients that are impacted and, you know, they
 16 had not at this point made any kind of--they
 17 were not wavering in any fashion on that
 18 point. They're pretty firm. They're
 19 insistent that they had and continued over and
 20 over again to repeat that. And, you know, the
 21 relationship that we have with each of our
 22 Authorities, you know, there is an element of
 23 trust involved and we need to have that kind
 24 of confidence in each other if we're going to
 25 work collectively together. So up to this

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1 particular point we were still trusting the
 2 information they were sharing with us because
 3 they were so adamant about it, and so
 4 insistent that it was in fact true and
 5 accurate.
 6 CHAYTOR, Q.C.:
 7 Q. But some of your people in the province and
 8 the patients are saying otherwise. The
 9 Canadian Cancer Society is in the media saying
 10 otherwise.
 11 MR. WISEMAN:
 12 A. And I hear your question and I don't want--I'm
 13 not arguing with you, necessarily.
 14 CHAYTOR, Q.C.:
 15 Q. Uh-hm.
 16 MR. WISEMAN:
 17 A. What I'm suggesting to you and saying to you
 18 is that at this point in time we were still,
 19 you know, having very firm and very definitive
 20 statements being made by Eastern Health, and
 21 they were very clear to us and very adamant
 22 that they were accurate in their assertion
 23 that everybody was being contacted. And, you
 24 know, we did have a--you know, had had--you
 25 know, still have a good working relationship

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1 with our health authorities and have to have
 2 some degree of trust. So when they're
 3 adamant, as they were that this is in fact the
 4 case, and then we took them on their word.
 5 CHAYTOR, Q.C.:
 6 Q. If we could back, please, to 0226. The second
 7 point made by Elizabeth Matthews, she says,
 8 "We did ensure that all patients were fully
 9 informed."
 10 MR. WISEMAN:
 11 A. Uh-hm.
 12 CHAYTOR, Q.C.:
 13 Q. And she thinks that's "a very solid point that
 14 is being lost." Who is the "we?"
 15 MR. WISEMAN:
 16 A. She may be referring collectively to a system,
 17 a health system, and obviously government
 18 being a part of that partnership would have
 19 been a part of that collective "we." I'm
 20 assuming that. Now I'm not--I'm just reading
 21 into it what I--I didn't write it, but it's an
 22 assumption I'm making.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. And, I take it, your department wasn't
 25 involved in any notification of patients.

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1 MR. WISEMAN:
 2 A. No.
 3 CHAYTOR, Q.C.:
 4 Q. You weren't involved directly on that.
 5 MR. WISEMAN:
 6 A. No.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. If we could turn then, please, to P-
 9 0130.
 10 REGISTRAR:
 11 Q. I'm sorry, I didn't catch the number.
 12 CHAYTOR, Q.C.:
 13 Q. P-0130. Mr. Wiseman, earlier today when I
 14 referred to one occasion in which I would have
 15 been aware that the July 20, 2005, memo came
 16 across your desk would have been respect to
 17 this exhibit, and this is the ATIPP request.
 18 And we understand that there was, according to
 19 the documentation, an Access to Information
 20 and Protection of Privacy Act requests
 21 received by your department on July 11, 2007,
 22 regarding this issue.
 23 MR. WISEMAN:
 24 A. Uh-hm.
 25 CHAYTOR, Q.C.:

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1 Q. And that came from Mr. Rob Antle of The
 2 Telegram, and you responded to that. Perhaps
 3 you could--what's the normal practice when a
 4 request of this nature comes into your
 5 department?
 6 MR. WISEMAN:
 7 A. The routing of the correspondence would have
 8 been entered into the tracking system for
 9 correspondence and routed to--in my
 10 department, it would have been--Reg Coates is
 11 the--I forget his title. With respect to this
 12 issue, it's a Coordinator or some such title
 13 as that. Reg would have initiated then a
 14 process to gather the information and put it
 15 together.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And the letter that we have here, and
 18 it appears that your letter is dated July 17,
 19 2007. That's July 17th. And Mr. Antle
 20 appears to have been looking for briefing
 21 notes related to this issue. And then--so, I
 22 take it, when it comes in, Mr. Coates is
 23 involved in the accumulation of the
 24 documentation.
 25 MR. WISEMAN:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And, eventually, within the thirty days it
 4 ends up back on your desk for signing?
 5 MR. WISEMAN:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Is it always--do you always sign these
 9 yourself or your Deputy sometimes?
 10 MR. WISEMAN:
 11 A. I couldn't say for certain whether it's all
 12 signed by me or some would be signed by the
 13 Deputy, only because I'm not certain of what
 14 the protocol requirements would call for.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. Do you recall this particular request?
 17 MR. WISEMAN:
 18 A. I do, yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay.
 21 MR. WISEMAN:
 22 A. It's the one where the briefing notes are
 23 broken by dates.
 24 CHAYTOR, Q.C.:
 25 Q. Yes.

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1 MR. WISEMAN:
 2 A. Dates coinciding with the--myself, my
 3 appointment as Minister, and the two previous
 4 Ministers' term as Ministers.
 5 CHAYTOR, Q.C.:
 6 Q. Yes. So you have a good recollection. The
 7 letter is there but it's--oh okay, and this
 8 one is signed. Okay. So that's--yeah. Okay.
 9 Now what do you do? When this ends up back on
 10 your desk, I take it, the letter is drafted
 11 for you for your signature and there would be
 12 documentation compiled along with the letter.
 13 What do you do in terms of your review of the
 14 documentation prior to signing the letter?
 15 MR. WISEMAN:
 16 A. There's only been, as I recall it, a few of
 17 these since I've been Minister. There hasn't
 18 been a large number of them. And Reg would
 19 provide me with a commentary of the nature of
 20 the request and the vetting that's been--you
 21 know, his review of it, and it wouldn't be a
 22 detailed presentation of what was actually in
 23 it and what's been vetted out and what's been
 24 deemed appropriate not to have been included,
 25 and that's what would have happened here.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. For example, here towards the bottom of
 3 the first page, it's written "Information that
 4 is non-responsive to the request has been
 5 severed. Access to parts of the documents are
 6 being denied in accordance with (a) paragraph
 7 21-A of ATIPP, whereby disclosure would be
 8 reveal advice or recommendations developed for
 9 a public body or Minister, and then (b)
 10 section 21 of ATIPP, whereby disclosure would
 11 disclose legal opinions, and (c) section 24,
 12 whereby disclosure could harm the financial or
 13 economic interest of the province, in section
 14 30 where personal information cannot be
 15 disclosed." So those were the four reasons
 16 given for any vetting or editing or severing
 17 of information.
 18 MR. WISEMAN:
 19 A. Right. I would rely on Reg to have made those
 20 interpretations and, I mean, it's--he has a
 21 greater expertise in this than I would. He
 22 deals with it on a regular basis and has been
 23 provided with the appropriate inservices and
 24 training with respect to the legislation, and
 25 so he would have--I would rely on him to

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1 actually have done this vetting based on his
 2 interpretation of these paragraphs.
 3 CHAYTOR, Q.C.:
 4 Q. Yes.
 5 MR. WISEMAN:
 6 A. I understand in this particular case here as
 7 well that the Cabinet Secretariat had been
 8 involved in some discussions around this
 9 particular response as well. So by the time
 10 it got to me it had gone already through a
 11 significant number of--amount of discussion
 12 and others, who have a much greater knowledge
 13 of that particular Act and what's appropriate
 14 to come out and not, than me, would have
 15 already reviewed it.
 16 CHAYTOR, Q.C.:
 17 Q. And you were aware of that when it was put
 18 before you.
 19 MR. WISEMAN:
 20 A. I was, yes.
 21 CHAYTOR, Q.C.:
 22 Q. And some of the things that are excluded--for
 23 example, if we could have page three of the
 24 exhibit, please? And this is one of your
 25 briefing notes. It's actually a June 14th

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1 briefing note, 2007, which I haven't directed
 2 you to. The anticipated questions are
 3 deleted, and that's true of all of the
 4 briefing notes that went out. All the
 5 anticipated questions are deleted. What's
 6 your understanding of why is that the
 7 practice? Why are the questions deleted?
 8 MR. WISEMAN:
 9 A. I don't have any real understanding of it
 10 which, as I said a moment ago, it's not an
 11 area that I would have, you know, debated or
 12 challenged or sought to better understand,
 13 given the fact that, you know, I had relied
 14 on, obviously, Reg's expertise in this area
 15 together with understanding as well that
 16 Cabinet Secretariat had been involved. So I
 17 wouldn't have engaged in any real lengthy
 18 discussion around why this--why questions were
 19 taken out.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. Was this the first time that you signed
 22 an ATIPP request?
 23 MR. WISEMAN:
 24 A. I'm not certain. As I've said, I don't think
 25 there's been very many since I've been

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1 Minister so this was maybe the first, but if
 2 it would be the first, it would be a first of
 3 a few.
 4 CHAYTOR, Q.C.:
 5 Q. Yes. Okay. Also, if we scroll down through
 6 the material, page 62--okay, and if we go back
 7 up here, Mr. Wiseman, this is the briefing
 8 note I referred you to earlier, the July 20,
 9 2005, one from Eastern Health? Do you see
 10 this?
 11 MR. WISEMAN:
 12 A. Uh-hm.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So this was included in the package
 15 that went out to Mr. Antle, and on page 62,
 16 the third page of that, there is a paragraph
 17 missing. Now, Mr. Wiseman, did that catch
 18 your attention that day?
 19 MR. WISEMAN:
 20 A. Didn't stand out particularly for me no more
 21 than anything else in the document.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. I guess you noticed the gaps though
 24 where the anticipated questions were.
 25 MR. WISEMAN:

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1 A. Uh-hm.
 2 CHAYTOR, Q.C.:
 3 Q. But whether or not this stood out, you're not
 4 able to say.
 5 MR. WISEMAN:
 6 A. I can't recall.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. Now if we could have the exhibit for
 9 the full document, 0073, is it? Anybody
 10 remember that from this morning--0075, thank
 11 you. Okay, this is the full document then.
 12 I'm just going to take you to that paragraph
 13 on the third page, and it's the second-last
 14 paragraph, "Eastern Health Vice-President of
 15 Quality Diagnostic and Medical Services, Dr.
 16 Robert Williams, has also asked that an
 17 investigation be conducted into the five-week
 18 stoppage of immunoperoxidase staining for
 19 ER/PR receptors in July--sorry, in 2003 by Dr.
 20 Ejeckam." So that's the paragraph that's
 21 missing from what goes out in this briefing
 22 note to Mr. Antle. I take it, there was no
 23 discussion between you and Mr. Coates as to
 24 that omission from the material and what basis
 25 could be given for that.

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1 MR. WISEMAN:
 2 A. White didn't have a great discussion around
 3 what was actually coming out. I don't recall
 4 that discussion.
 5 CHAYTOR, Q.C.:
 6 Q. At this point in time - this is now June of
 7 2007 - are you aware of the issue that came up
 8 in 2003 with respect to Dr. Ejeckam?
 9 MR. WISEMAN:
 10 A. I am, by this time, yes.
 11 CHAYTOR, Q.C.:
 12 Q. By this time, you know.
 13 MR. WISEMAN:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. When did you learn of that?
 17 MR. WISEMAN:
 18 A. There was a--some time after the middle of May
 19 - I don't know the exact date - there was a
 20 fax sent into the department to the Deputy at
 21 the time to--from--Dr. Oscar Howell is the
 22 current VP of Medical Services at Eastern
 23 Health, and attached a copy of the letter
 24 written by Dr. Ejeckam in 2003, and that would
 25 have been -

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1 CHAYTOR, Q.C.:
 2 Q. So it came from Oscar Howell to your Deputy?
 3 MR. WISEMAN:
 4 A. To the Deputy some time in -
 5 CHAYTOR, Q.C.:
 6 Q. Was that John Abbott at the time?
 7 MR. WISEMAN:
 8 A. Yes, exactly, yeah. And that would have been
 9 some time around the 20-odd or something of
 10 May. I just forget the exact date now, but it
 11 was around that time.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. And how would Dr. Howell come to send
 14 that to Mr. Abbott? Did you make any inquiry?
 15 MR. WISEMAN:
 16 A. As I understand it, recognize that--as I said
 17 earlier, that when this issue--I started
 18 dealing with this issue in '05 and in May of--
 19 May 15 of '07, then from that point on, you
 20 know, there was a real intense discussion.
 21 Within the department, there was discussion,
 22 dialogue back and forth between the department
 23 and Eastern Health, and this came up in a
 24 telephone--as I understand it and recall the
 25 conversation with the Deputy at the time was,

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1 you know, he was a conversation with Dr.
 2 Howell and he, you know, indicated that he had
 3 this piece of correspondence that they had
 4 come across, and he was sending it to him and
 5 so that's how we--it came in our possession.
 6 CHAYTOR, Q.C.:
 7 Q. Okay.
 8 MR. WISEMAN:
 9 A. And that was -
 10 CHAYTOR, Q.C.:
 11 Q. So you weren't part of that telephone
 12 discussion.
 13 MR. WISEMAN:
 14 A. No. No.
 15 CHAYTOR, Q.C.:
 16 Q. That was between Dr. Howell and Mr. Abbott.
 17 MR. WISEMAN:
 18 A. Yeah. And that's how I understand how he
 19 became aware of it, and then what I saw was a--
 20 the letter attached to a fax cover sheet that
 21 came into the office from Eastern Health.
 22 CHAYTOR, Q.C.:
 23 Q. Yes. Okay. Maybe we could look at P-0111,
 24 please? Okay. And it says "Received, Deputy
 25 Minister's Office," stamped "May 25, 2007."

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1 Fax transmission from Eastern Health, highly
 2 private and confidential to John Abbott from
 3 Dr. Oscar Howell." Is this it, Minister?
 4 MR. WISEMAN:
 5 A. It looks like the one, yes. Is that the
 6 attachment? Yeah.
 7 CHAYTOR, Q.C.:
 8 Q. Oh, sorry. Yes, it does. We'll go back to
 9 the beginning, and this is the attachment.
 10 MR. WISEMAN:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. It's a memo to Terry Gulliver from Dr. G.
 14 Ejeckam, "subject, immunohistochemical stains
 15 at Health Science Center," and the date on
 16 this particular memo is "June 19, 2003."
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. So what you're saying is that Mr. Abbott - and
 21 it says on the fax here, if we just--the only
 22 thing on the fax cover says, "subject, lab
 23 letter, and "Mr. Abbott has discussed with Dr.
 24 Howell." So after receiving this, did Mr.
 25 Abbott come to you with this document?

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1 MR. WISEMAN:
 2 A. Yes, he did. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And did he give you a copy of it?
 5 MR. WISEMAN:
 6 A. He did, yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. And what did you do with the document?
 9 MR. WISEMAN:
 10 A. Actually, I shared it with the Premier and,
 11 well -
 12 CHAYTOR, Q.C.:
 13 Q. And why did you do that?
 14 MR. WISEMAN:
 15 A. Then, obviously, this--you know, as a part of
 16 our discussion around, you know, the period in
 17 question here and it was 1997 to 2005 when
 18 there was some question around the ER/PR test.
 19 And, you know, in a discussion around the--I
 20 just--I can't recall exactly how the
 21 conversation evolved, but I was part of a
 22 conversation that included the Premier and we
 23 were talking about the time-lines for this and
 24 I had indicated at the time that, you know, I
 25 just received this letter. It indicated that

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1 this had become an issue much earlier than we
 2 were now having a discussion around it, much
 3 earlier than the 2005 time period when the
 4 former Minister had a discussion with Eastern
 5 Health with respect to it, that this in fact
 6 had been an issue prior to 2005 and this
 7 letter was actually confirmation of that.
 8 CHAYTOR, Q.C.:
 9 Q. So you understood that this memo indicated
 10 that the problems, which had now been
 11 discovered in 2005 with the ER/PR testing,
 12 perhaps had come to light back in 2003?
 13 MR. WISEMAN:
 14 A. Obviously, I wasn't making a--making a
 15 connection, yes, but I wasn't drawing the
 16 conclusion that this was an automatic--but
 17 this was obviously clearly an indication that
 18 there were some issues with respect to to
 19 ER/PR testing during this period of time in
 20 2003 as well, and it hadn't surfaced for the
 21 first time in 2005.
 22 CHAYTOR, Q.C.:
 23 Q. And how soon after receiving this information
 24 in this document did you speak with the
 25 Premier?

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1 MR. WISEMAN:
 2 A. I'm not certain. It wouldn't have been like a
 3 long time after that. It would have been, you
 4 know, within a day or so. It wasn't one of
 5 these letters that I received and, as a result
 6 of getting it, I initiated a meeting with the
 7 Premier to discuss it. It was something that
 8 happened and--you know, that--when I received
 9 it, more coincidental than anything else, we
 10 were having another discussion as part of some
 11 other reason for being together and I shared
 12 it in that kind of setting. So it wasn't that
 13 I took this, you know, by itself and used it
 14 as a subject for a discussion with a very
 15 specific meeting with the Premier.
 16 CHAYTOR, Q.C.:
 17 Q. Did you give him a copy of it?
 18 MR. WISEMAN:
 19 A. I did, yes.
 20 CHAYTOR, Q.C.:
 21 Q. Yeah. And on the fax sheet, there's a--in the
 22 top, right-hand corner, there's some writing.
 23 Do you know what that means, "EXE?" Do you
 24 know what that might mean?
 25 MR. WISEMAN:

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1 A. This would have--I believe it's a--I made a
 2 comment earlier about when something comes
 3 into the office it's entered into a tracking
 4 system, and so that would have been, I
 5 believe, the tracking of that document when it
 6 entered the department, and "JA," I believe,
 7 would mean John Abbott and "EX" would mean the
 8 executive office, so that's a filing numbering
 9 system.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. And "received by ADM, RHO, May 31,
 12 2007," what would that mean? Do you know?
 13 MR. WISEMAN:
 14 A. I don't know.
 15 CHAYTOR, Q.C.:
 16 Q. And then it's faxed May 25th, Gerri Smith,
 17 Justice.
 18 MR. WISEMAN:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And I understand she's a lawyer at Justice.
 22 MR. WISEMAN:
 23 A. Yes, that's right.
 24 CHAYTOR, Q.C.:
 25 Q. Did you instruct the document to be sent to

1 Justice Department?
 2 MR. WISEMAN:
 3 A. No, I didn't.
 4 CHAYTOR, Q.C.:
 5 Q. Do you know who did?
 6 MR. WISEMAN:
 7 A. I have no idea.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. And when you spoke to the Premier and
 10 gave him a copy of this, what was his
 11 reaction?
 12 MR. WISEMAN:
 13 A. I mean, I don't recall the reaction. It was
 14 just--because we were having the conversation
 15 around--in the context of, you know, this, you
 16 know, had--wasn't something new that came onto
 17 the horizon in 2005. This was something that
 18 had obviously been--already been dealt with in
 19 some fashion or been discussed in some fashion
 20 previously by the former St. John's Health
 21 Care Corporation before the establishment of
 22 Eastern Health in the beginning.
 23 CHAYTOR, Q.C.:
 24 Q. And was that an issue as to whether or not
 25 this issue had arisen during Eastern Health or

1 reference to the former St. John's Health Care
 2 Corporation and Eastern Health, that would
 3 have been the distinction that I'd make.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. And so eventually, I think, we all know
 6 from the public anyhow that this memo was
 7 tabled in the House of Assembly by the
 8 Premier.
 9 MR. WISEMAN:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And did you know the Premier was going to do
 13 that?
 14 MR. WISEMAN:
 15 A. He hadn't shared it with me in advance, no.
 16 CHAYTOR, Q.C.:
 17 Q. If we could go back then again, please, to P-
 18 0130.
 19 THE COMMISSIONER:
 20 Q. Ms. Chaytor, it's about time for the afternoon
 21 break.
 22 CHAYTOR, Q.C.:
 23 Q. Oh, sure.
 24 THE COMMISSIONER:
 25 Q. Can we take that now, or would you prefer to

1 during the Health Care Corporation because, I
 2 mean, obviously, the testing went back to
 3 1997, so that would have pre-dated the Eastern
 4 Health formation.
 5 MR. WISEMAN:
 6 A. Yes. I think one of the things that, you
 7 know, wasn't a--one of the--well, some of the
 8 public commentary about, you know, the ER/PR
 9 testing brought into question the whole
 10 decision of government in 2005 to consolidate
 11 health authorities, and there were some who
 12 were trying to make a connection between the
 13 consolidation of health boards in 2005 and
 14 some challenges that Eastern Health may be
 15 experiencing today. There has been some
 16 connection here in some fashion and that, as a
 17 result of the consolidation of health
 18 authorities now, there's something ill-toward
 19 happening and it could be a direct connection
 20 to the consolidation. And despite, you know,
 21 my commentary and other commentary to the fact
 22 that, you know, there was no relationship
 23 between the two issues, you know, some would
 24 continue to make that kind of observation.
 25 And so in that context, you know, any

1 ask this question and -
 2 CHAYTOR, Q.C.:
 3 Q. Perhaps we can just go back to 0130 and I'll -
 4 THE COMMISSIONER:
 5 Q. You want to complete that -
 6 CHAYTOR, Q.C.:
 7 Q. I'll finish up with the ATIPP.
 8 THE COMMISSIONER:
 9 Q. By all means, do so, yes. Sure.
 10 CHAYTOR, Q.C.:
 11 Q. Thank you. Sorry, 0130--if we could go back
 12 to the first page of 0130. Thank you. Okay,
 13 we're back to the letter now that you sent to
 14 Mr. Antle, and we discussed some omissions or
 15 deletions or severances, including the
 16 anticipated questions and the reference to
 17 the--the Dr. Ejeckam reference in 2003. And
 18 from my review, those appear to be the primary
 19 severances from this material. Mr. Wiseman,
 20 there's no indication on the document in the
 21 margins or otherwise as to which of the four
 22 reasons for severance would apply to each of
 23 the severances. Are you aware whether or not
 24 that's supposed to be indicated on the
 25 document?

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1 MR. WISEMAN:
 2 A. No. I'm not aware, no.
 3 CHAYTOR, Q.C.:
 4 Q. If we can look at exhibit P-0284, please. And
 5 is this a document you've seen before, Mr.
 6 Wiseman? It says "processing ATIPP request."
 7 MR. WISEMAN:
 8 A. No, it's not a document I'm familiar with at
 9 all.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. We could just -
 12 REGISTRAR:
 13 Q. You want it full screen?
 14 CHAYTOR, Q.C.:
 15 Q. No. Yeah, that's fine, please. Yes. Thank
 16 you, that's fine. And if you would just
 17 scroll down to "apply exceptions." So we're
 18 on page two of the document at the very
 19 bottom. Can you read that? I apologize, it's
 20 quite small. Can you see that, Mr. Wiseman?
 21 MR. WISEMAN:
 22 A. Yes, I can. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Line by line review, number seven, "apply
 25 exceptions. Highlight section to be accepted

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1 in yellow highlighter and note appropriate
 2 section next to it. If more than one section
 3 applies, indicate both." So it appears that
 4 the guidelines indicate that the appropriate
 5 section that's being referred to, or relied
 6 upon for the exception, should be noted,
 7 according to the guidelines, but you weren't
 8 aware of that, I take it.
 9 MR. WISEMAN:
 10 A. No, I hadn't seen this before.
 11 CHAYTOR, Q.C.:
 12 Q. And that's not something that Mr. Coates or
 13 anyone else in your department has ever
 14 brought to your attention.
 15 MR. WISEMAN:
 16 A. No, it's not something--one of the things
 17 with, you know, the--I just can't imagine the
 18 number of pieces of correspondence and--that
 19 would come to the department on a monthly
 20 basis, and there's a heavy--as a Minister -
 21 and other Ministers no doubt would make this
 22 same observation - you know, there's some
 23 things of a routine nature where there's a
 24 technical expertise involved or somewhere
 25 where there's a technical expertise involved

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1 and a certain amount of, you know, a body of
 2 knowledge that you need to have to process
 3 things like this. There becomes a heavy
 4 reliance by people like myself as a Minister
 5 on the officials you have in your department
 6 to deal with these sorts of things on a day-
 7 to-day basis, because my comment is not a
 8 criticism of Mr. Coates at all but purely one
 9 of--a commentary about my reliance as a
 10 Minister on people like Mr. Coates and others
 11 like him who do these things on a day-to-day
 12 basis, and so I don't get into, you know,
 13 searching the source information for the work
 14 that they do.
 15 CHAYTOR, Q.C.:
 16 Q. Yes.
 17 MR. WISEMAN:
 18 A. And so I wouldn't have had any reason to
 19 inquire like this, and I wouldn't necessarily
 20 have thought or expected or been disappointed
 21 if he hadn't brought it to my attention that
 22 this is something I should know as a Minister
 23 with respect to ATIPP requests.
 24 CHAYTOR, Q.C.:
 25 Q. And have you inquired of Mr. Coates since

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1 because I know we've raised this issue before,
 2 but have you inquired of Mr. Coates as to why
 3 the reference to Dr. Ejeckam was left out of
 4 the materials that was provided to Antle?
 5 MR. WISEMAN:
 6 A. I don't recall having that discussion with
 7 him.
 8 CHAYTOR, Q.C.:
 9 Q. No?
 10 MR. WISEMAN:
 11 A. No.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. Thank you, Commissioner.
 14 THE COMMISSIONER:
 15 Q. All right. Take fifteen minutes.
 16 (RECESS)
 17 THE COMMISSIONER:
 18 Q. Ms. Chaytor.
 19 CHAYTOR, Q.C.:
 20 Q. Thank you, Commissioner. Mr. Wiseman, do you
 21 recall on or about June 11th having a meeting
 22 with Mr. Tilley?
 23 MR. WISEMAN:
 24 A. It would have been around that time, yes.
 25 CHAYTOR, Q.C.:

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1 Q. And who else attended that meeting?
 2 MR. WISEMAN:
 3 A. It was a meeting that Robert Thompson was
 4 present as well, if I'm not mistaken.
 5 CHAYTOR, Q.C.:
 6 Q. And was the Chair of Eastern Health's Board,
 7 Joan Dawe, also in attendance?
 8 MR. WISEMAN:
 9 A. I'm not certain actually.
 10 CHAYTOR, Q.C.:
 11 Q. And what do you recall being the purpose of
 12 the meeting?
 13 MR. WISEMAN:
 14 A. It was around that time that we had a meeting
 15 to discuss some of these -- I mentioned
 16 earlier about when things started to change
 17 with respect to the confidence level that we
 18 had in the information that was being shared,
 19 and I think that was the gist of that
 20 discussion at that time, if I'm not mistaken.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So by June 11th is when your confidence
 23 level was to the point where you met with Mr.
 24 Tilley to find out if this is -- if you're
 25 getting the right information?

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1 MR. WISEMAN:
 2 A. I think there was -- around that time, there
 3 was an exchange that occurred between Mr.
 4 Thompson, and I'm not sure if it was officials
 5 within Eastern Health or Mr. Tilley himself,
 6 where there was some qualifiers starting to be
 7 introduced to some of the information. Up to
 8 this point, as I shared with you earlier, they
 9 were pretty emphatic that everybody had been
 10 contacted. Each and every time we discussed
 11 the issue, they were clear, concise, and they
 12 were very adamant that every single person had
 13 been contacted, unwavering on it, and in
 14 around that time Mr. Thompson brought to my
 15 attention that, you know, he had either some
 16 previous correspondence or some previous
 17 conversation with Eastern Health, someone
 18 within Eastern Health, where that started to
 19 be qualified in some fashion, and he alerted
 20 me to that.
 21 CHAYTOR, Q.C.:
 22 Q. If we could look, please, at P-0231, page one.
 23 This is a series of e-mails again, and I had
 24 directed your attention to a portion of those
 25 e-mails in another document earlier. This is

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1 the one where Tansy is writing about what
 2 happened in Question Period with Gerry Reid.
 3 MR. WISEMAN:
 4 A. Yes, okay.
 5 CHAYTOR, Q.C.:
 6 Q. And then Mr. Thompson's reply to Tansy on
 7 that, "I like the idea of referring to a
 8 previously released material". You'll recall
 9 that Tansy was suggesting that she put forward
 10 what was contained in the background or to the
 11 news release issue regarding the inquiry. So
 12 Mr. Thompson is indicating that he likes the
 13 idea of referring to previously released
 14 material, "The only possible remaining
 15 question is whether some of the communications
 16 only went to physicians, raising the
 17 possibility that physicians did not contact
 18 patients. In other words, is it possible that
 19 some patients were not contacted at all". So
 20 at this point in time, it appears that a
 21 question has certainly been raised in Mr.
 22 Thompson's mind, and the reply from Tansy to
 23 both yourself and Robert Thompson on that
 24 within a couple of minutes is, "Susan Bonnell
 25 reconfirmed for me today on the phone that

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1 once a letter was sent to physicians regarding
 2 patients, that they followed up with
 3 individual physicians to ensure that patients
 4 were contacted". So I take it that once again
 5 the Department is getting reassurance from
 6 Eastern Health that not only -- even if it
 7 were that the contact was through physicians,
 8 they had followed up with individual
 9 physicians to ensure that the patients were
 10 contacted?
 11 MR. WISEMAN:
 12 A. Another example of the point I just made a
 13 moment ago, they had been pretty clear, you
 14 know, very clear throughout this whole
 15 discussion that, yes, we have contacted
 16 everybody.
 17 CHAYTOR, Q.C.:
 18 Q. And I take it today now, Mr. Wiseman, you
 19 don't believe this to be the case?
 20 MR. WISEMAN:
 21 A. Based on the information that's been put
 22 together by Robert Thompson and his group from
 23 Centre for Health Information, we now know
 24 that that is not the case, nor was it the case
 25 at that time.

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1 CHAYTOR, Q.C.:

2 Q. That they were following up with individual

3 physicians?

4 MR. WISEMAN:

5 A. Well, not -- that part I wouldn't want to

6 comment on because I'm not sure if Mr.

7 Thompson has actually dealt with that

8 particular question. What I am commenting on

9 is that all the patients had been contacted.

10 CHAYTOR, Q.C.:

11 Q. Yes, okay. So then you meet on or about June

12 11th with Mr. Tilley. So on June 11th,

13 there's a meeting with Mr. Tilley, on or about

14 there, and you raised the issue of are you

15 sure about the information that you're

16 providing to us. Is that the subject matter

17 or the main subject matter that was discussed?

18 MR. WISEMAN:

19 A. That was the -- I'm not sure of the exact full

20 nature of the discussion, but fundamentally

21 the -- and I'm not sure of the sequence here.

22 There was also a point in time when either

23 following this discussion or just prior to

24 this discussion, we had officials from the

25 Department go in to Eastern Health to try to

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1 reconcile the paper trail of contact here. I

2 think I shared with you a few moments ago that

3 they weren't able to do that, and the

4 information that they had seen at that time

5 was incomplete and they weren't able to

6 actually confirm that all contact had been

7 made or confirm that none that been made

8 because the documentation wouldn't have

9 allowed them to reconstruct that kind of

10 trail, and that's when the Centre for Health

11 Information got involved. So I'm not sure if

12 that happened prior to the meeting with Mr.

13 Tilley or one that happened to follow, but

14 those series of events had happened.

15 CHAYTOR, Q.C.:

16 Q. And did you take up with Mr. Tilley how they

17 could have been so adamant regarding the issue

18 of patient contact, given what you had now

19 discovered in terms of the lack of paper

20 documentation regarding patient contact?

21 MR. WISEMAN:

22 A. That was -- that was generally the nature of

23 the discussion, and he wasn't able to offer a

24 definitive answer as to what happened.

25 CHAYTOR, Q.C.:

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1 Q. Did he offer you any answer?

2 MR. WISEMAN:

3 A. He too was relying on information that was

4 being -- obviously, as the CEO, he wasn't

5 himself personally involved in the actual

6 process, and so he was getting information fed

7 up through the system to him as well, in the

8 same fashion as information was coming into

9 the Department. So, you know, the information

10 that he was sharing was based on information

11 that he had been given as well.

12 CHAYTOR, Q.C.:

13 Q. And who did he indicate he was relying upon?

14 MR. WISEMAN:

15 A. I'm not sure that he -- I can't recall if he

16 indicated any one person or group of people.

17 CHAYTOR, Q.C.:

18 Q. If we could have P-0236, please, and perhaps

19 if we go back actually before that to P-0233,

20 and this is an e-mail that you would have

21 received from Robert Thompson, along with --

22 it's forwarded from Robert to Brian Crawley,

23 Elizabeth Matthews, Moira Hennessey, Tansy

24 Mundon, and yourself, Mr. Wiseman. Mr.

25 Wiseman, at this point in time, who has

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1 control over or who is managing this file from

2 the Government's point of view?

3 MR. WISEMAN:

4 A. As of the first part of June?

5 CHAYTOR, Q.C.:

6 Q. Yes.

7 MR. WISEMAN:

8 A. Robert Thompson would be in his capacity as

9 the Acting Deputy in my Department.

10 CHAYTOR, Q.C.:

11 Q. And who does he receive his directions from at

12 this point in time?

13 MR. WISEMAN:

14 A. He would be -- with respect to departmental

15 issues, he would receive his direction from

16 me, but his appointment as Secretary to

17 Cabinet on adverse health issues, that's a

18 different relationship on that particular

19 file.

20 CHAYTOR, Q.C.:

21 Q. And who would he report to in that regard?

22 MR. WISEMAN:

23 A. Directly to Cabinet.

24 CHAYTOR, Q.C.:

25 Q. And this e-mail from Mr. Thompson, he's

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1 indicating that he's talked to George,
 2 presumably George Tilley, and Heather Predham,
 3 and the key question is whether the Eastern
 4 Health statements that all patients were
 5 contacted in October, 2005, is accurate, and
 6 the short answer that he has received and that
 7 he's communicating to the rest of you is,
 8 "Every patient who they had identified for
 9 retesting by October, 2005, was contacted by
 10 telephone at that time", and then the long
 11 answer is, "Eastern Health was reasonably
 12 confident at that time that it had identified
 13 everyone in the province that needed
 14 retesting. Procedures to compile the list
 15 included using various databases", and it
 16 goes on from there, and it gives another
 17 reason why some people were not phoned, is
 18 that the results were already back from Mount
 19 Sinai and had been transmitted to their
 20 oncologist, and it continues. He says, "In
 21 conclusion, we are informed by Eastern Health
 22 that all people who had been identified for
 23 retest by October, 2005, were called in
 24 October, 2005, except for some people whose
 25 results were already back. For more people,

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1 though, we are told it was a small number who
 2 were identified after that date, and may not
 3 have been called at all. It is unfortunate
 4 that Eastern Health did not raise these
 5 qualifications in their media briefings
 6 because it leaves the impression that 100
 7 percent of the 763 retested patients were
 8 called, when in actual fact there's some
 9 degree of variation from the absolute level.
 10 Furthermore, the total of 763 was not known in
 11 October, 2005. It was first used in December,
 12 2006". So certainly by this point in time
 13 Robert Thompson has been asking questions
 14 about the accuracy of the patient contact
 15 information?
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And as we'll learn further down the road,
 20 there's probably -- through the piece of work
 21 that has been done, there's probably even a
 22 greater number of people than what's indicated
 23 here. If I could then go to P-0236, and this
 24 is an e-mail from yourself to Mr. Thompson,
 25 June 12th, 2007, re; ER/PR, "Robert, as a

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1 follow-up to our earlier conversation, re;
 2 info I need for a meeting with the Premier, is
 3 it possible to have it by tomorrow for a
 4 meeting tomorrow night", and the e-mail below
 5 that is from Robert Thompson to yourself, June
 6 11th, regarding what the Department knew in
 7 the months after October, '05, "I can confirm
 8 that we knew the following about the number
 9 retest based on briefing notes. I have not
 10 yet seen the Eastern Health briefing
 11 material". Now, Mr. Wiseman, it appears that
 12 you were asking -- you're following up in a
 13 conversation that you had had with Robert,
 14 needing certain information for a meeting with
 15 the Premier. Do you recall what this was
 16 about and what was the purpose of your meeting
 17 with the Premier?
 18 MR. WISEMAN:
 19 A. No, I don't actually, and as I'm reading this
 20 now, I can't recall having a meeting with the
 21 Premier in the evening at any time during that
 22 period of time.
 23 CHAYTOR, Q.C.:
 24 Q. Do you recall having a meeting at any time on
 25 June 13th or thereabouts with the Premier on

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1 this issue?
 2 MR. WISEMAN:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. So this meeting that was planned, do you
 6 recall then -- you had a conversation earlier
 7 with Robert Thompson, you were looking for
 8 information. Do you recall what information
 9 you were looking for from Robert Thompson?
 10 MR. WISEMAN:
 11 A. No, I don't. It may not be related
 12 necessarily to this particular file either.
 13 CHAYTOR, Q.C.:
 14 Q. So you don't recall around this time having
 15 any meeting with the Premier on this issue?
 16 MR. WISEMAN:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. Did you have other occasions when you met with
 20 the Premier on this issue?
 21 MR. WISEMAN:
 22 A. Not -- we had a conversation in Cabinet, and
 23 then there's been a couple of short
 24 conversations during a Cabinet meeting around,
 25 you know, work that might be in progress, and

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1 -- but beyond that, I've never had a meeting
 2 dedicated to ER/PR with the Premier.
 3 CHAYTOR, Q.C.:
 4 Q. Has the Premier ever given you any advice or
 5 direction in terms of your public
 6 communications on this issue?
 7 MR. WISEMAN:
 8 A. Not that I can recall.
 9 CHAYTOR, Q.C.:
 10 Q. And -- well, something that's been ongoing
 11 just in the past few months, so do you think
 12 that you would recall if the Premier had given
 13 you such advice or direction?
 14 MR. WISEMAN:
 15 A. You mean the -- you know, he's made some
 16 compliments or comments that were
 17 complimentary in terms of, you know, some
 18 interview I may have done with respect to the
 19 issue, but in terms of advice or direction or
 20 to advise me or give me a direction, not that
 21 I can recall.
 22 CHAYTOR, Q.C.:
 23 Q. So none of the occasions in which you spoke
 24 regarding the issue were done specifically at
 25 the Premier's direction?

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1 MR. WISEMAN:
 2 A. Not that I -- we may -- the relationship a
 3 Minister may have with the Premier, there
 4 would be any number of times where we'd be
 5 talking about a very specific issue that we
 6 may have intended to talk about, have a
 7 discussion, and we -- you know, in the course
 8 of a telephone conversation or a -- you know,
 9 a much more casual meeting that might grow out
 10 of a Cabinet meeting or something, talk about
 11 a range of issues, and as a result of that
 12 discussion you'd have an exchange on a variety
 13 of topics, but I -- there's never been a time
 14 when we've had a sit down dedicated discussion
 15 around ER/PR and what, you know, we should or
 16 should not -- what I should or should not be
 17 saying. We've had some discussions around,
 18 you know, the -- in terms of the message that
 19 we wanted to, you know, to be able to
 20 communicate around the Government's intention
 21 with establishing the Commission of Inquiry,
 22 for example, and, you know, we've had some
 23 clear understanding that everybody needs to be
 24 fully aware -- we want this to be a very open
 25 and transparent process, and where people are

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1 able to -- you know, the Commission is able to
 2 garner the information that they need. We've
 3 had those kinds of discussions.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, but no -- my question being whether or
 6 not the Premier had given you any advice or
 7 direction to speak on this issue, whether or
 8 not that had happened?
 9 MR. WISEMAN:
 10 A. I can't recall it like that, no.
 11 CHAYTOR, Q.C.:
 12 Q. The issue that I spoke about before the break,
 13 the Dr. Ejeckam memo being faxed from Dr.
 14 Howell to Mr. Abbott in your office, that was
 15 the first time you indicated you became aware
 16 of the existence of such a memo?
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And the first time you became aware there was
 21 an issue in 2003?
 22 MR. WISEMAN:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. When you were Parliamentary Secretary to the

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1 previous Minister of Health, or the previous
 2 two Ministers of Health, was that issue ever
 3 brought to your attention?
 4 MR. WISEMAN:
 5 A. No.
 6 CHAYTOR, Q.C.:
 7 Q. Have you ever gone back to make any inquiries
 8 of Mr. Ottenheimer or Mr. Osborne as to their
 9 knowledge of the 2003 issue and whether or not
 10 they were aware of it before you became aware
 11 of it in May of 2007?
 12 MR. WISEMAN:
 13 A. No, I haven't, and I -- the fact that the
 14 Deputy Minister first saw it when it was faxed
 15 from Dr. Howell in May of 2007, and he'd been
 16 the Deputy under those previous two Ministers,
 17 you know, would suggest that, you know, the
 18 Department didn't have such knowledge as well
 19 because -- the assumption I'm making is that
 20 if the Ministers had such information, then
 21 the Deputy would have had it, or they would
 22 have gotten it by way of having gotten it
 23 through the Deputy, as I did.
 24 CHAYTOR, Q.C.:
 25 Q. Now, Mr. Wiseman, the reference to Dr. Ejeckam

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1 appears in the July 20th, 2005, briefing note
 2 if Eastern Health.
 3 MR. WISEMAN:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. Which was provided to the Department on July
 7 21st, 2005, during a briefing of Minister
 8 Ottenheimer at the time.
 9 MR. WISEMAN:
 10 A. Uh-hm.
 11 CHAYTOR, Q.C.:
 12 Q. And that makes reference in that to Dr.
 13 Ejeckam and the 2003 issue, and we understand
 14 that Mr. Abbott would have been in attendance
 15 during that briefing.
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Are you saying that Mr. Abbott indicated to
 20 you that he wasn't aware of the 2003 issue
 21 regarding Dr. Ejeckam?
 22 MR. WISEMAN:
 23 A. The -- the -- I don't know if he said directly
 24 this is the first time I've seen this, but he
 25 was sharing it with me as new information.

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1 CHAYTOR, Q.C.:
 2 Q. Yes, in fairness, it probably would have been
 3 the first time he'd seen the memo.
 4 MR. WISEMAN:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. But did he indicate to you that he was
 8 otherwise aware that there was an issue
 9 identified in 2003 by Dr. Ejeckam which caused
 10 a five to six week shutdown or stoppage of IHC
 11 in the lab at that time?
 12 MR. WISEMAN:
 13 A. I can't recall him sharing that, no.
 14 CHAYTOR, Q.C.:
 15 Q. Were you left otherwise with the impression
 16 otherwise that he -- this was new information
 17 to him, that he wasn't otherwise aware?
 18 MR. WISEMAN:
 19 A. The -- the impression, and I wouldn't -- I'm
 20 not suggesting that he did something
 21 intentional to give me that impression, but
 22 clearly when he gave me the letter after
 23 receiving it from Dr. Howell, I received it
 24 and took it as if it were new information that
 25 he too was receiving at this time. So I

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1 didn't pursue a line of questioning with him
 2 to ask whether or not he'd seen this before or
 3 did you have prior knowledge of it. I didn't
 4 -- I don't recall pursuing that kind of
 5 discussion with him.
 6 CHAYTOR, Q.C.:
 7 Q. And he didn't offer to you that this is
 8 something -- this issue was in a prior
 9 briefing note that had come through the
 10 Department?
 11 MR. WISEMAN:
 12 A. I didn't have -- I don't recall having that
 13 kind of discussion with him, no.
 14 CHAYTOR, Q.C.:
 15 Q. So you didn't ask Mr. Ottenheimer or Mr.
 16 Osborne about that particular issue. Have you
 17 ever asked either of them -- once you became
 18 seized of this matter as Minister of Health,
 19 have you ever had any discussions since with
 20 them as to their knowledge on this issue and
 21 what they may or may not have done on this
 22 issue?
 23 MR. WISEMAN:
 24 A. The discussion that -- the only part of the --
 25 the only discussion I've had with, or that

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1 they were involved with, would have been the
 2 discussion that took place around the Cabinet
 3 table in that briefing of the 17th, and there
 4 may have been some casual conversations that
 5 we may have had as a result of being together
 6 at the Cabinet table, and either before a
 7 meeting or after a meeting, having a brief
 8 conversation about things, as we frequently
 9 might, and -- but that would be the extent to
 10 which it would have happened.
 11 CHAYTOR, Q.C.:
 12 Q. Now included in the memo, not necessarily the
 13 memo that was faxed to your office in May of
 14 2007, but there are three memos from Dr.
 15 Ejeckam, all at various points in time in
 16 2003; the first one originating in April,
 17 2003. Are you aware that there are three
 18 memos, Mr. Wiseman, from Dr. Ejeckam? You may
 19 not be aware of that.
 20 MR. WISEMAN:
 21 A. Yes, I've seen -- because there was some
 22 follow up conversation. There's some minutes
 23 of some meetings as well that would have
 24 occurred, and one -- two or three meetings or
 25 something. I know one in particular

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1 acknowledged the minutes of a -- I forget the
 2 name of the committee, but acknowledged that
 3 the issue --
 4 CHAYTOR, Q.C.:
 5 Q. Surgical Pathology.
 6 MR. WISEMAN:
 7 A. The issue had been resolved, something to that
 8 effect.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, so you've seen that documentation since?
 11 MR. WISEMAN:
 12 A. I've seen those, yes.
 13 CHAYTOR, Q.C.:
 14 Q. And when did you become aware that there was
 15 more documentation regarding this issue back
 16 in 2003?
 17 MR. WISEMAN:
 18 A. I'm not certain exactly when, but it would
 19 have been obviously some time after I received
 20 the first one that there would have been some
 21 additional information that would have come in
 22 from Eastern Health that would have been
 23 shared, again the same source. I would have
 24 gotten it from the Deputy, but I can't recall
 25 when that would have been.

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1 CHAYTOR, Q.C.:
 2 Q. Okay, and you're aware that in the originating
 3 or the first memo of Dr. Ejeckam, he, in fact,
 4 identified six other IHC stains as well that
 5 were of concern at that time?
 6 MR. WISEMAN:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And has your Department made any inquiries as
 10 to whether there should be any review or
 11 retrospective study with respect to those
 12 other stains?
 13 MR. WISEMAN:
 14 A. Robert Thompson has, yes.
 15 CHAYTOR, Q.C.:
 16 Q. And what is the outcome of that?
 17 MR. WISEMAN:
 18 A. Well, from the information that he supplied to
 19 me and, in fact, a very recent conversation,
 20 my understanding is he's had a recent opinion
 21 from a pathologist -- I'll say pathologist
 22 because I believe that's who it is, a
 23 pathologist -- physician, rather, let me
 24 rephrase it, a physician who is -- there's a -
 25 -

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1 CHAYTOR, Q.C.:
 2 Q. Dr. Greg Flynn?
 3 MR. WISEMAN:
 4 A. Yes, there's an exchange of e-mail --
 5 CHAYTOR, Q.C.:
 6 Q. Dr. Greg Flynn?
 7 MR. WISEMAN:
 8 A. An e-mail that says something to that effect
 9 that, you know, the -- because Robert has
 10 queried that point, and some of the initial
 11 queries around that point go back to just
 12 after Robert assumed his role in early June,
 13 and there's some exchanges of the e-mails at
 14 that time between him and Dr. Fleming, I
 15 believe, with -- there's another physician in
 16 the Department of Health and Community
 17 Services who works with Dr. Ed Hunt, in that
 18 Division, so that some of the initial inquires
 19 in and around that occurred in early June, and
 20 then the more recent one, and by recent
 21 meaning the last maybe weeks or a month, when
 22 Dr. Flynn would have provided the most recent
 23 commentary that I'm aware of with respect to
 24 that issue.
 25 CHAYTOR, Q.C.:

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1 Q. Yes, okay, and what's the outcome of the
 2 inquiries? Is Dr. Flynn concerned or what's
 3 his advice?
 4 MR. WISEMAN:
 5 A. The --
 6 CHAYTOR, Q.C.:
 7 Q. What was his opinion on the issue?
 8 MR. WISEMAN:
 9 A. I think the issue is, you know, the -- my
 10 understanding of the opinion that he's
 11 provided is that, you know, there's no further
 12 action necessary on that.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and if we could have a look, please, at
 15 P-0276. First of all, Minister, do you
 16 understand that Dr. Gregory Flynn, who you are
 17 referring to, that he's the same person who
 18 did the review of the QMP-LS review --
 19 MR. WISEMAN:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. On December 7th, 2007, of the laboratory?
 23 MR. WISEMAN:
 24 A. I'm aware of that.
 25 CHAYTOR, Q.C.:

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1 Q. 0276, this is an e-mail exchange from Robert
 2 Thompson to Rolf Pritchard, March 27th, 2008,
 3 forwarding a request for an opinion and the
 4 copy you requested, and it's from Dr. Greg
 5 Flynn sent Tuesday, March 25th, 2008, to
 6 Robert Thompson, copied to Brian Hewlett. Do
 7 you know who Brian Hewlett is? We understand
 8 that he's a lab technician that works with Dr.
 9 Flynn, with the QMP-LS people. I won't take
 10 you through the whole thing, but this does
 11 indicate, "The most important difference
 12 between hormone receptor staining and staining
 13 for these other six markers is that therapy is
 14 decided on the basis of ER/PR results. All
 15 the other markers, with the possible exception
 16 of CD20, are used as an adjunct to diagnosis".
 17 So I take it then, Mr. Wiseman, this is the e-
 18 mail exchange that you're referring to, or the
 19 e-mail from Dr. Flynn?
 20 MR. WISEMAN:
 21 A. Yes, that's the one, yes.
 22 CHAYTOR, Q.C.:
 23 Q. And he continues on down and says, "All of
 24 that said, if you do a retrospective review,
 25 you will find "errors". You may find

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1 clinically significant situations, but the
 2 extent is going to be much, much smaller, and
 3 I believe much less significant for the
 4 reasons stated", and he does some detail on
 5 the reasons prior to that. "So in our view,
 6 all of the IHC tests currently performed will
 7 benefit from improved training, revamped
 8 procedures, validation of methodology, quality
 9 control/quality assurance, and continuous
 10 monitoring of results in the IHC lab. As in
 11 all diagnostic services, there should be
 12 communication and feedback between the lab and
 13 the end user as part of the quality system.
 14 Results that do not "fit" with the clinical
 15 behaviour of a patient's disease should be
 16 reviewed. Just as they were in the breast
 17 cancer situation where cases that an
 18 oncologist would have "expected to be
 19 positive" were not, and when patients who were
 20 reported as "negative for receptors" but who
 21 were treated anyway, responded to anti-
 22 estrogen therapy. I hope this helps. It would
 23 not be a recommendation that there would be --
 24 that there would be a retrospective review of
 25 additional markers. The explanation for any

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1 discordant findings, however few, will be
 2 difficult to comprehend by the public.
 3 Sincerely, Greg and Brian". I take it, that's
 4 Brian Hewlett. So that's the opinion that
 5 you're referring to on that?
 6 MR. WISEMAN:
 7 A. The most recent one, yes.
 8 CHAYTOR, Q.C.:
 9 Q. Most recent. Is there another?
 10 MR. WISEMAN:
 11 A. No, not as far as I'm aware of, anyway. This
 12 is the most recent that I'm aware of.
 13 CHAYTOR, Q.C.:
 14 Q. And that's the only one that you're aware of?
 15 MR. WISEMAN:
 16 A. There were some previous ones in early June
 17 where Dr. Fleming had inquired of Dr. Howell
 18 with respect to that. I saw them back in some
 19 earlier exhibits that pre-dates this one here.
 20 CHAYTOR, Q.C.:
 21 Q. That's right, where Dr. Fleming made inquiries
 22 of Dr. Howell --
 23 MR. WISEMAN:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. On the same issue.
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Yes, that's right.
 6 MR. WISEMAN:
 7 A. I commented on that in response to your
 8 question, had I made any inquiries.
 9 CHAYTOR, Q.C.:
 10 Q. Yes, thank you, and before I leave the Dr.
 11 Ejeckam issue, you shared the memo that was
 12 faxed to your Department that day with the
 13 Premier. Did you share that with anyone else
 14 within Cabinet, with any of your Cabinet
 15 colleagues?
 16 MR. WISEMAN:
 17 A. I don't think so, but I can't recall -- I
 18 wouldn't have distributed copies to everybody.
 19 It's not something I would have done.
 20 CHAYTOR, Q.C.:
 21 Q. Did anyone else receive that information?
 22 MR. WISEMAN:
 23 A. I think my Cabinet colleagues were aware that
 24 such a -- such a letter existed, but I don't
 25 think anyone would have received this formally

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1 in the same fashion as I received it in the
 2 Department, or in the same fashion as I gave
 3 it to the Premier.
 4 CHAYTOR, Q.C.:
 5 Q. And was there any contact made with the other
 6 health authorities, the other three regional
 7 health authorities to determine whether or not
 8 they were aware of the situation?
 9 MR. WISEMAN:
 10 A. I wouldn't be able to say with some degree of
 11 certainty whether if some officials in the
 12 Department would have had that discussion. I
 13 wouldn't want to say with certainty because I
 14 don't know.
 15 CHAYTOR, Q.C.:
 16 Q. So you didn't direct Moira, for example, to
 17 make contact and find out if there was any
 18 more information around this issue?
 19 MR. WISEMAN:
 20 A. I can't recall. If Moira, for example, has
 21 indicated that I gave her that direction, then
 22 --
 23 CHAYTOR, Q.C.:
 24 Q. No, no, I'm not suggesting that.
 25 MR. WISEMAN:

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1 A. No, no, I'm just -- I can't recall myself, but
 2 --
 3 CHAYTOR, Q.C.:
 4 Q. I'm just wondering if there was any other
 5 direction that you gave regarding that
 6 information?
 7 MR. WISEMAN:
 8 A. Not that I recall.
 9 CHAYTOR, Q.C.:
 10 Q. I take you to your next briefing note then. I
 11 believe it's June 14th, 2007, P-0126, page 64.
 12 You'll just see at the end here that the -- I
 13 think I went too far with it. I'll just
 14 scroll down here, page 67. We see again that
 15 it's drafted by Beverley Griffiths and
 16 approved by Moira Hennessey, and it's dated
 17 June 14th, 2007, and the title is ER/PR
 18 testing, Eastern Health, "The issue is ongoing
 19 concerns regarding ER/PR testing at Eastern
 20 Health. On May 28th, Justice Carl Thompson of
 21 the Newfoundland and Labrador Supreme Court,
 22 certified a class action suit on behalf of up
 23 to 100 individuals. The Opposition may ask
 24 about Government settling the matter out of
 25 court". Then there's a list of anticipated

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1 questions, including, "Will Government
 2 consider settling this out of court rather
 3 than go through litigation, was there an
 4 attempt by the Department and/or Eastern
 5 Health to cover up", I think we've seen that
 6 one before, "has Eastern Health now notified
 7 all affected patients", we've certainly seen
 8 that question before, "at what time did former
 9 Ministers of Health become aware, why was
 10 Government and Eastern Health more concerned
 11 with the risk of litigation", we've seen that
 12 before, and then "Can women's groups be
 13 consulted on how the judicial inquiry will be
 14 carried out", and under your key messages, the
 15 very first bullet refers to the Judge's
 16 decision on the certification of the class
 17 action suit, "It's premature to determine the
 18 next steps. We understand from the media that
 19 Mr. Crosbie will be speaking to Eastern
 20 Health's lawyer and we will monitor these
 21 discussions", and then it states, "I will be
 22 refraining from any further public comment".
 23 Now, Mr. Wiseman, based on what you've told us
 24 over the course of the past two days, is that
 25 your position that you will refrain from any

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1 further public comment, presumably because the
 2 issue of litigation is ongoing?
 3 MR. WISEMAN:
 4 A. No, no, the -- the issue of the ER/PR, as I
 5 said before, you know, I -- as I'm reading
 6 this along with you, I would have meant -- I
 7 would assume they're talking about any comment
 8 about the class action suit. Issues with
 9 respect to ER/PR and what involvement Eastern
 10 Health may have had, and what involvement the
 11 Department may have had, and my opinions on
 12 issues around disclosure, but I would be, as
 13 I've said before, pretty open to making those
 14 comments.
 15 CHAYTOR, Q.C.:
 16 Q. Yes, and again I take it that you didn't go
 17 back to Moira and indicate that that's not
 18 your position?
 19 MR. WISEMAN:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. Because we're seeing this two or three now
 23 briefing notes being carried forward wherever
 24 who the drafter is of this note appears to
 25 think that that would be your position?

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1 MR. WISEMAN:
 2 A. Yeah, and I think the -- I've indicated to you
 3 a couple of times before as well that, you
 4 know, any time during last year you will not -
 5 - I wasn't in the habit of, didn't get into
 6 the habit of having briefing notes edited so
 7 that the language reflected, you know, my
 8 current thinking because I was using them --
 9 knowing that I was the one going to be
 10 speaking to it, I would either pick and choose
 11 what I want. I've since become much more
 12 selective about the briefing notes that I sign
 13 off on that has language that may or may not
 14 reflect what I think.
 15 CHAYTOR, Q.C.:
 16 Q. But beyond, though, it being language and
 17 whether or not it's something you would stand
 18 up then and say, it's -- in terms of going
 19 back and telling the people that work for you
 20 that these are our positions, this is my
 21 position, and this is -- it's a clarification
 22 with them as to what your position would be.
 23 MR. WISEMAN:
 24 A. I think here, though, if you read the -- as
 25 I'm reading this particular point -- I

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1 appreciate your comment, but as I'm reading
 2 this last sentence in this bullet here, I'm
 3 reading that to be in the context of the class
 4 action suit, and if there's a class action
 5 suit, I mean, obviously, I wouldn't want to
 6 put myself in the middle of -- if there's a
 7 class action suit, that's very different.
 8 CHAYTOR, Q.C.:
 9 Q. So you would refrain from any comment on the
 10 class action suit?
 11 MR. WISEMAN:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. The next bullet, we've seen several briefing
 15 notes now, it's the one where absolutely not
 16 the full disclosure, and we've been through
 17 that, but my only question on this is now --
 18 Mr. Wiseman, this briefing note is June 14th,
 19 2007.
 20 MR. WISEMAN:
 21 A. Right.
 22 CHAYTOR, Q.C.:
 23 Q. And I've just taken you through the e-mails
 24 where clearly the doubts have arisen.
 25 MR. WISEMAN:

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1 A. Yeah.
 2 CHAYTOR, Q.C.:
 3 Q. And have been clearly articulated, certainly
 4 by Robert Thompson and within your Department.
 5 So why are we still seeing this in your
 6 briefing note?
 7 MR. WISEMAN:
 8 A. I can't comment on that, I really couldn't,
 9 because there's no real justification for it
 10 here now.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And again, you didn't take the issue
 13 up, though, with Moira?
 14 MR. WISEMAN:
 15 A. No.
 16 CHAYTOR, Q.C.:
 17 Q. And tell her "That's not our position at this
 18 stage."
 19 MR. WISEMAN:
 20 A. Right.
 21 CHAYTOR, Q.C.:
 22 Q. And again, that same bullet appears again, the
 23 bottom of the page, "The Inquiry will address
 24 these questions. However, reiterating that
 25 all patients who were affected were

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1 contacted."
 2 MR. WISEMAN:
 3 A. Um-hm.
 4 CHAYTOR, Q.C.:
 5 Q. And again, even though this is June 14th and
 6 that's no longer your position or
 7 understanding, it appears in your briefing
 8 note and you didn't address it with Moira?
 9 MR. WISEMAN:
 10 A. One of these things that might happen with
 11 these updates, too, if there's one or two
 12 bullets have changed, you know, the practice
 13 is not to go through a major edit of the
 14 entire document. If there's a new bullet to
 15 be added or a new point to be added, it's an
 16 add on to an already existing briefing note so
 17 that that might be what's happening here. But
 18 at the same time, I will, I acknowledge your
 19 point and I can't tell you that I had actually
 20 gone to her and told her not to put that in
 21 there again either.
 22 CHAYTOR, Q.C.:
 23 Q. Um-hm.
 24 MR. WISEMAN:
 25 A. I would also add that.

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1 CHAYTOR, Q.C.:

2 Q. Yes. Because the purpose too of updating the

3 briefing note is to update, I would think, the

4 current position in the briefing note, current

5 position of the government and what your

6 position will be in addressing the public?

7 You would want to have current information?

8 MR. WISEMAN:

9 A. You would think, yes.

10 CHAYTOR, Q.C.:

11 Q. On June 14th did you have any meetings around

12 this issue on that date? Any meetings with--

13 for example, have you ever meet with the

14 Regional Health Chairs, have you met with the

15 Chairs of the boards, other boards?

16 MR. WISEMAN:

17 A. I've had, since I've been Minister I've had

18 three, of not four, meetings with board Chairs

19 and CEOs.

20 CHAYTOR, Q.C.:

21 Q. And have you had meetings in which this issue

22 would have been discussed?

23 MR. WISEMAN:

24 A. It would have been, yes.

25 CHAYTOR, Q.C.:

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1 Q. Okay. And would that have been around June

2 14th or the middle of June?

3 MR. WISEMAN:

4 A. It may have been. I'm just trying to recall

5 now when the--if we did or not. It is quite

6 possible because I've had three or four since

7 I've been Minister.

8 CHAYTOR, Q.C.:

9 Q. And do you recall then who else would have

10 attended the meeting with the Regional Health

11 Authority Chairs? And I take it this is the

12 Board Chairs?

13 MR. WISEMAN:

14 A. Board Chairs and it would have been the Deputy

15 and -

16 CHAYTOR, Q.C.:

17 Q. And the Deputy at that point was still Mr.

18 Thompson?

19 MR. WISEMAN:

20 A. At that time would have been Robert. And or

21 Chairs and the CEOs and the Deputy, that's who

22 normally would have attended. And I've had

23 meetings where the Deputies have been involved

24 both Mr. Abbott, Mr. Thompson and Mr. Keats,

25 since his arrival.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And around the ER/PR issue or where the

3 ER/PR issue would have been a subject of

4 discussion?

5 MR. WISEMAN:

6 A. Yeah, it would have been the subject of a--

7 this wouldn't have been the sole reason for

8 having such a meeting, but the issue around

9 ER/PR would have been one of the topics being

10 talked about.

11 CHAYTOR, Q.C.:

12 Q. And the first one then, I guess, would have

13 been the meeting in mid June, would be the

14 first time that you had a meeting on this

15 issue with Regional Health Board Chairs in

16 that you yourself became involved in the issue

17 -

18 MR. WISEMAN:

19 A. Yes, it would have been, yes.

20 CHAYTOR, Q.C.:

21 Q. I- in May?

22 MR. WISEMAN:

23 A. Yeah.

24 CHAYTOR, Q.C.:

25 Q. Okay. And do you recall, where did that

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1 meeting take place?

2 MR. WISEMAN:

3 A. We've had meetings that have been held at a

4 hotel on Kenmount Road, a hotel on Elizabeth

5 Avenue, the -

6 CHAYTOR, Q.C.:

7 Q. Okay. So it was outside, outside of

8 Confederation Building?

9 MR. WISEMAN:

10 A. Outside of Confederation Building, yes.

11 CHAYTOR, Q.C.:

12 Q. Okay. And do you recall what was discussed at

13 that meeting in terms of the ER/PR issue?

14 MR. WISEMAN:

15 A. You know, in general, you know, a general

16 discussion in terms of how the issue has

17 impacted our health system, you know, the need

18 for a--or discussions in and around how we

19 manage and deal with adverse events that

20 happen in our health system and issues around,

21 you know, the flow of information,

22 communication issues, things like that that

23 would have been -

24 CHAYTOR, Q.C.:

25 Q. And did the Chairs of the Regional Health

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1 Authorities, the other three, Central, Western
 2 and Labrador, Grenfell, did the Chairs of
 3 those Boards express any concerns to you
 4 around the handling of the ER/PR issue, the
 5 handling or the management of the issue?
 6 MR. WISEMAN:
 7 A. I'm just trying to reflect now on the, you
 8 know, the flavour of that kind of discussion
 9 and what very specific issues they may raise.
 10 You know, I'm not sure if they expressed them
 11 in terms of how it was handled or how it was
 12 communicated, but you know, there was a--I
 13 really can't recall. I wouldn't want to start
 14 speculating.
 15 CHAYTOR, Q.C.:
 16 Q. Were there any issues brought to your
 17 attention by the Chairs of those Boards?
 18 MR. WISEMAN:
 19 A. There may have been but I can't recall it at
 20 the time.
 21 CHAYTOR, Q.C.:
 22 Q. You don't recall that?
 23 MR. WISEMAN:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. And in terms of any issues of flow of
 2 communication, I take it, what you're meaning
 3 there is the flow of communication to the
 4 patients?
 5 MR. WISEMAN:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So if there were concerns of the other
 9 Health Authority and they were expressed to
 10 you, you don't recall that now?
 11 MR. WISEMAN:
 12 A. No. I mean, if they were--they would have--
 13 no, I just, I'm trying to recall now the
 14 nature of the kind of discussion that we had.
 15 And, I mean, part of the discussion would have
 16 included, you know, the, you know, the
 17 confidence in the health system, because the
 18 four Authorities expressed some concern, you
 19 know, that, you know, this, an event such as
 20 this can have the potential to, you know, to
 21 undermine some of the good things that they
 22 were both--all four of them were doing. So
 23 that would have been a part of the general
 24 kind of thrust of the discussion. So any
 25 concerns might have been, some concerns would

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1 have been raised around that. But with
 2 respect to the ER/PR issue and what it might
 3 impact them or how their involvement might be,
 4 I can't recall something that would be
 5 characterized as a concern that they raised.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. And you know, and perhaps there
 8 weren't, I'm just trying to -
 9 MR. WISEMAN:
 10 A. There may well be, yes, I just can't recall
 11 it, yes.
 12 CHAYTOR, Q.C.:
 13 Q. Perhaps there weren't. Yes. In terms of
 14 their information management systems, and I'll
 15 get to in a little while about some funding
 16 that has been recently provided to Eastern
 17 Health in that regard, has anyone from the
 18 other three Regional Health Authorities
 19 indicated any inadequacy in their information
 20 management systems?
 21 MR. WISEMAN:
 22 A. I think, in general, they've all indicated
 23 that they need the greater investment and
 24 information management systems.
 25 CHAYTOR, Q.C.:

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1 Q. And has that come up as a topic of concern
 2 with respect to the ER/PR issue?
 3 MR. WISEMAN:
 4 A. The ER/PR, the issue of information management
 5 has been raised in the context of this
 6 discussion here. And how that might have
 7 impacted the, you know, the outcomes or the
 8 communication process, but the issue of
 9 information management and technology to allow
 10 that is one piece of this, this piece here, in
 11 terms of the overall information management
 12 part of this. You know, some of the other
 13 pieces of this that we recognize is, you know,
 14 the management process and how the management
 15 decisions got made in terms of how this is
 16 going to be handled. Whether you have
 17 electronic management information or you have
 18 manual information systems, there's still a
 19 process. And in as much as electronic
 20 information systems would facilitate an ease
 21 of managing information, you know, there is
 22 still the question of--in the absence of that
 23 kind of electronic systems--how you, you know,
 24 maintain records and information in a manual
 25 format. And so that's a piece of the

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1 discussion around what happened here as well.
 2 But each of the four Authorities have raised
 3 the need to have a greater investment in
 4 information management systems.
 5 CHAYTOR, Q.C.:
 6 Q. Did you discuss with the Regional Health
 7 Authority Chairs anything to do with Robert's
 8 role in addressing adverse health events or
 9 Robert Thompson's role in terms of the liaison
 10 for the Inquiry from government's point of
 11 view? Was that subject of any discussion with
 12 the -
 13 MR. WISEMAN:
 14 A. We may very well have because it was timely
 15 (phonetic)--would have dictated some of the
 16 agenda items. And that might have been talked
 17 about in the context of an update in general
 18 information. But I don't--I just don't recall
 19 generally, the detail of that kind of
 20 discussion.
 21 CHAYTOR, Q.C.:
 22 Q. And was it contemplated that Robert's role
 23 would be exclusively for the government in
 24 terms of the liaison for communications to the
 25 Inquiry or was it contemplated that he would

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1 also fill that role for the Regional Health
 2 Authorities?
 3 MR. WISEMAN:
 4 A. Government.
 5 CHAYTOR, Q.C.:
 6 Q. Just government?
 7 MR. WISEMAN:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And if I can just focus for a moment then on
 11 any meetings or discussions you've had with
 12 Ms. Dawe as the Chair of Eastern Health
 13 because she indicated in her evidence that
 14 there were meetings regarding this issue with
 15 you.
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Do you recall having a discussion or a meeting
 20 with her on the comments that were attributed
 21 to you in May of 2007 where you had indicated
 22 that you understood Eastern Health had acted
 23 on legal advice in not disclosing all the
 24 numbers? Do you recall Ms. Dawe approaching
 25 you and discussing that issue with you?

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1 MR. WISEMAN:
 2 A. We had a discussion around that issue, yes.
 3 CHAYTOR, Q.C.:
 4 Q. And what do you recall about that?
 5 MR. WISEMAN:
 6 A. I think my recollection is that she had
 7 indicated, wanted me to understand that that
 8 was not the Board's view.
 9 CHAYTOR, Q.C.:
 10 Q. And what did you tell her?
 11 MR. WISEMAN:
 12 A. Well, actually I had--the information that I
 13 had shared with you here and I'd shared in the
 14 public domain back then was information that
 15 had been shared with me by the former CEO as
 16 to the rationale for the information provided
 17 in December of '06.
 18 CHAYTOR, Q.C.:
 19 Q. Yes. And you told her that you had received
 20 that information from Mr. Tilley?
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And she took exception with that being Eastern
 25 Health's position?

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1 MR. WISEMAN:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And -
 5 MR. WISEMAN:
 6 A. Well, the exception that she took was it--
 7 there hadn't been a position by the Board, but
 8 it had obviously been a position taken by the
 9 CEO.
 10 CHAYTOR, Q.C.:
 11 Q. Did you also have any discussions with Ms.
 12 Dawe around the issue of whether or not the
 13 government had lost confidence with Mr. Tilley
 14 around this issue?
 15 MR. WISEMAN:
 16 A. There was that discussion that took place some
 17 time in, you know, I think the question was
 18 something to the effect, do you have any
 19 concerns around the CEO's performance and she
 20 might have identified him by name, at this
 21 particular time or around this issue or some
 22 such phrase as that, but it was in the context
 23 of the ER/PR issue.
 24 CHAYTOR, Q.C.:
 25 Q. Yes. And what was your response?

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1 MR. WISEMAN:
 2 A. And I had indicated that, you know, at that
 3 time we still had confidence that he was able
 4 to carry out his role as a CEO.
 5 THE COMMISSIONER:
 6 Q. Mr. Wiseman, you're saying that this was
 7 raised by Ms. Dawe? The question of whether
 8 or not there was confidence in Mr. Tilley, was
 9 -
 10 MR. WISEMAN:
 11 A. Because the -
 12 THE COMMISSIONER:
 13 Q. - raised by her or did you raise it?
 14 MR. WISEMAN:
 15 A. She came to see me one day to talk about the
 16 issue and where we were in terms of the ER/PR
 17 issue relative to how government viewed the
 18 Board and more precisely, how government
 19 viewed Mr. Tilley as a CEO. And she wanted to
 20 have that kind of discussion at that moment
 21 because I think there was a pending board
 22 meeting or some discussion she was having.
 23 So, her and I had a brief chat about that one
 24 day.
 25 CHAYTOR, Q.C.:

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1 Q. And you indicated at that point in time you
 2 hadn't lost confidence with Mr. Tilley over
 3 this issue?
 4 MR. WISEMAN:
 5 A. Uh-hm.
 6 CHAYTOR, Q.C.:
 7 Q. Did that ever change?
 8 MR. WISEMAN:
 9 A. I had a subsequent conversation with Ms. Dawe
 10 later on where I had, after another event
 11 involving Eastern Health, and with the two
 12 events and the similarities, in terms of
 13 leadership provided on both, I had expressed a
 14 concern and indicated that, I had lost--or we
 15 had lost, as a government, confidence in the
 16 leadership being provided within Eastern
 17 Health.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And that other issue being, I take it,
 20 the Burin radiology issue?
 21 MR. WISEMAN:
 22 A. Yes, that's correct.
 23 CHAYTOR, Q.C.:
 24 Q. So, the loss of confidence in Mr. Tilley's
 25 ability to lead the organization was, at

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1 least, partly attributed to the ER/PR issue
 2 and the handling of that issue?
 3 MR. WISEMAN:
 4 A. When we were having the discussion around the
 5 Bruin radiology event and what had happened
 6 with the radiology films in Burin and the
 7 manner in which that was being handled and
 8 managed, as I was having that discussion
 9 around those events, there were a lot of
 10 similarities to the discussions that I had had
 11 earlier around ER/PR.
 12 CHAYTOR, Q.C.:
 13 Q. And what were those similarities?
 14 MR. WISEMAN:
 15 A. In terms of the managing of--this was a
 16 management of a process. And, you know, the -
 17 CHAYTOR, Q.C.:
 18 Q. And where did you see--I guess my question is,
 19 where did you see that it was lacking, the
 20 management of the process?
 21 MR. WISEMAN:
 22 A. When you're trying to deal with events such as
 23 the ER/PR issue and you're dealing with
 24 events, the radiology reports on the Burin
 25 Peninsula, when you have--and your

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1 organization is faced with some significant
 2 challenges like that, expectation is that the
 3 leadership will step up to the plate and
 4 provide the direction and leadership to the
 5 rest of the organization to work your way
 6 through, manage it, deal with it
 7 appropriately. And as many aspects of that--
 8 one is issues around the approach to gathering
 9 information; the approach to communicating
 10 information; issues around disclosure and the
 11 management processes you have in place to
 12 manage the various aspects of your
 13 organization. In this case it was a section
 14 of the lab or one case was a section of the
 15 lab and the other case was a diagnostic
 16 imaging service on the Burin Peninsula.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So, I just want to be clear, so it was
 19 loss of confidence in terms of what actually,
 20 in fact, had happened in the lab which led to
 21 the change results, so, the actual loss, I
 22 take it, of quality assurance or quality
 23 control measures in the lab. That was one of
 24 your concerns, is that right? Is that where--
 25 that was one of issues?

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1 MR. WISEMAN:
 2 A. (No audible response).
 3 CHAYTOR, Q.C.:
 4 Q. The lack of disclosure, you're referring to
 5 December 2006, is that correct?
 6 MR. WISEMAN:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And the lack of communication processes, are
 10 you referring to the communications with the
 11 public and the patients?
 12 MR. WISEMAN:
 13 A. What I indicated--keep in mind that we're now-
 14 -we started the conversation about June month
 15 when I had the initial conversation with Ms.
 16 Dawe. The second conversation was later on
 17 during that summer. And what we had was
 18 another event that had happened with radiology
 19 on the Burin Peninsula. And in having a
 20 discussion with Mr. Tilley and officials
 21 around what took place there; how it was being
 22 managed; who is in charge of it; how we were
 23 gathering information; how we had planned to
 24 approach dealing with the issue with respect
 25 to the communication piece, with respect to,

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1 you know, managing the information, being able
 2 to identify patients who were involved; the
 3 patient contact process, all of those aspects
 4 of managing the task at hand. As I was
 5 listening to a discussion around those
 6 aspects, you know, they were reminiscent of
 7 some of the discussions we had around how that
 8 task of managing the issue before them in 2005
 9 was managed. And with a combination of those
 10 two things coming together and recognizing
 11 that, you know, there needed to be a stronger
 12 leadership provided within that organization
 13 to manage events such as that and others that
 14 may occur in the future. I expressed that
 15 view to Ms. Dawe at that time.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. Another occasion in which Ms. Dawe
 18 indicated that she met with you followed you
 19 Mr. Tilley's resignation and she had met with
 20 the Medical Advisory Committee who had
 21 expressed to her a great deal of concern
 22 regarding Mr. Tilley's resignation. Do you
 23 recall that meeting with Ms. Dawe?
 24 MR. WISEMAN:
 25 A. Yes, I do.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. And tell us what you recall about that
 3 meeting please?
 4 MR. WISEMAN:
 5 A. Well, you've kind of capsulized it in that the
 6 Medical Advisory Committee had indicated that
 7 they had strong support for Mr. Tilley and
 8 that they saw him as providing strong
 9 leadership to the organization.
 10 CHAYTOR, Q.C.:
 11 Q. Were there any issues identified in terms of
 12 what the physicians saw as lack of support
 13 from the Department?
 14 MR. WISEMAN:
 15 A. I don't recall that part of the conversation.
 16 I can't recall that coming up in the
 17 conversation; it may have, but I don't recall
 18 it.
 19 CHAYTOR, Q.C.:
 20 Q. So, you don't recall whether or not there was
 21 any indication relayed to you through Ms. Dawe
 22 from the physicians that they were looking at
 23 lack of support in terms of new technology or
 24 lack of support for the physicians, whether
 25 through remuneration or otherwise. You don't

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1 recall those factors being discussed?
 2 MR. WISEMAN:
 3 A. The issue of technology, the issues has been
 4 raised by physicians a number of times that
 5 they would like to see greater investments in
 6 technology, both from an information
 7 technology perspective plus medical equipment.
 8 And Ms. Dawe has shared on any number of
 9 occasions. The issue around the remuneration
 10 (sic.) piece, we may have had some discussion
 11 around physician remuneration (sic.), but I
 12 don't recall that being a large part of the
 13 discussion that we would have had. It's quite
 14 possible that we did, but I don't recall the
 15 nature of it.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And Ms. Dawe does, indeed, recall on
 18 another occasion meeting with you to discuss
 19 retention and recruitment of pathologists. Do
 20 you recall a specific meeting around that or
 21 do you recall any meeting in which that was
 22 specifically addressed?
 23 MR. WISEMAN:
 24 A. Yes, you know, we've had a number of
 25 discussions. I'm just--because Ms. Dawe and I

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1 have a pretty close working relationship in
 2 terms of our frequency of our telephone
 3 conversations and periodic times when she may
 4 drop by the office and we will have a brief
 5 chat about some issues. So, it's not a
 6 formally structured process where you identify
 7 the frequency of those meetings. So, we talk,
 8 you know, by phone frequently and we meet in
 9 person in my office periodically. And so we
 10 would have had a variety of conversations over
 11 time, you know, pathology retention, or
 12 retention of pathologists has surfaced. It
 13 has surfaced in the context of, you know,
 14 what's happening in the lab today and the need
 15 to make sure that we're able to recruit and
 16 retain pathologists for the province.
 17 CHAYTOR, Q.C.:

18 Q. Yes. And Ms. Dawe indicated to the
 19 Commissioner that she would only intervene at
 20 that level after a certain degree of
 21 frustration had been met between the other
 22 levels within your department or the others
 23 negotiating, that she would only intervene and
 24 contact you on that issue after they had been
 25 frustrated with trying to move that issue

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1 forward. Do you recall the context of that?
 2 Is that your recollection that she would only
 3 be approaching you on this issue after other
 4 avenues had been exhausted?
 5 MR. WISEMAN:

6 A. That kind of conversation would probably--and
 7 I'm just trying to recall when we might have
 8 had that conversation around the--when she saw
 9 herself intervening for an action.
 10 CHAYTOR, Q.C.:

11 Q. She thought it occurred around the spring of
 12 2007, if that helps with your recollection.
 13 MR. WISEMAN:

14 A. Yes, I'm just trying to--yeah, that would put
 15 it in some context because the issue of
 16 pathologists and compensation has been an
 17 issue that's been on the go dating back into
 18 2007 and maybe even earlier.
 19 CHAYTOR, Q.C.:

20 Q. Yes.
 21 MR. WISEMAN:

22 A. But there was a report that was commissioned--
 23 Department of Health was having a discussion
 24 with Treasury Board around pathology
 25 compensation more directly. Because the

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1 current financial arrangement with physicians
 2 and their compensation is a part of an
 3 agreement that currently exists with the
 4 Provincial government and the Newfoundland and
 5 Labrador Medical Association and that
 6 agreement is in place until some time in the
 7 fall of 2009. And so there's a--any time that
 8 you're contemplating, you know, providing some
 9 kind of additional compensation of stipend to
 10 a group of physicians outside that kind of
 11 arrangement, you know, there's a process that
 12 that department would be engaged in. Part of
 13 that process would be to, you know, seek the
 14 approval of the Treasury Board, president of
 15 the Treasury Board who is responsible for
 16 negotiating those financial arrangements and
 17 those agreements. And so, the department
 18 approached Treasury Board with respect to the
 19 additional compensation for pathologists. As
 20 a part of that review and evaluation, there
 21 was a report commissioned that was released
 22 some time the latter part of January of 2007.
 23 CHAYTOR, Q.C.:

24 Q. January 22.
 25 MR. WISEMAN:

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1 A. Yes, okay.
 2 CHAYTOR, Q.C.:

3 Q. If we could have exhibit 0278 please, 0278.
 4 Sorry, go ahead.
 5 MR. WISEMAN:

6 A. Okay, want me to wait until it's up on the
 7 screen?
 8 CHAYTOR, Q.C.:

9 Q. Sure. This is the report, is it?
 10 MR. WISEMAN:

11 A. Yes, that's the one we're talking about. And
 12 that report was commissioned to help inform
 13 that decision making process around what might
 14 be a reasonable, you know, compensation for
 15 pathologists and how might we be able to
 16 provide some additional compensation for them.
 17 And as a result of this particular report
 18 here, that's what brought about the--I think
 19 earlier today I acknowledged that there was a
 20 stipend paid to pathologists--it was some time
 21 in the middle of May, it was announced and
 22 with an effective date of some time in
 23 February, I believe.
 24 CHAYTOR, Q.C.:

25 Q. Okay. And perhaps then, if we could look at

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1 P-0201. This is a letter written on Eastern
 2 Health, Department of Laboratory Medicine
 3 letterhead, March 8, 2007. It's addressed to
 4 Mr. John Abbott as Deputy Minister of the
 5 Department and it's copied to--signed by,
 6 sorry, Doctor Nash Denic, President of the
 7 Newfoundland Association of Pathologists and
 8 Interim Clinical Chief, Laboratory Medicine
 9 Program, St. John's Hospitals, Eastern Health.
 10 And it's copied to yourself, the Honourable
 11 Ross Wiseman, Minister; copied to Premier
 12 Danny Williams, also Honourable T. Marshall,
 13 Minister of Finance and Mr. Rob Ritter,
 14 Executive Director of NLMA. Do you recall
 15 receiving this letter, Mr. Wiseman or a copy
 16 of this letter?
 17 MR. WISEMAN:
 18 A. I'm aware of the letter, yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. And this address the issues of
 21 recruitment and retention of pathologists?
 22 MR. WISEMAN:
 23 A. Exactly, yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. If we can have -

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1 MR. WISEMAN:
 2 A. I think the discussion with Ms. Dawe would
 3 have centered around, you know, the pace in
 4 which action was being taken on this issue
 5 because as you can see, this is dated March.
 6 This issue arose much earlier than this
 7 because the report was commissioned and
 8 received in January. And -
 9 CHAYTOR, Q.C.:
 10 Q. The first paragraph indicates, it says, "we
 11 have communicated this problem over the last
 12 three years with the department of health".
 13 That's the position being put forth by Doctor
 14 Denic.
 15 MR. WISEMAN:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And do you believe that to be the case?
 19 MR. WISEMAN:
 20 A. I don't know--I mean, it may very well be. I
 21 wouldn't have been involved in any previous
 22 discussions prior to becoming Minister on the
 23 issue, but it may have been on the go for a
 24 while.
 25 CHAYTOR, Q.C.:

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1 Q. And you didn't have any discussions with
 2 either Mr. Ottenheimer or Mr. Osborne on this
 3 issue or Mr. Abbott to indicate what the
 4 history of the issue was?
 5 MR. WISEMAN:
 6 A. Well, I was aware that it had been on the go
 7 for a while. I don't know whether it was a
 8 year or two or three years as indicated in
 9 this letter, but we had just, shortly after I
 10 got there, became Minister rather, the report
 11 came in and so now the government had--the
 12 department had the report, is now able to deal
 13 directly with Treasury Board on coming to an
 14 understanding of what that additional
 15 compensation should be.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And then if we could have please P-0205
 18 and this a letter stamp dated May 18, 2007,
 19 top right corner, there's a date of May 25,
 20 2007. I'm not sure which date is the
 21 appropriate one, but it's a letter written to
 22 Terry O'Grady on the government letterhead,
 23 President of the Newfoundland and Labrador
 24 Medical Association and it's a letter signed
 25 by yourself, Ross Wiseman, Trinity North

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1 District, Minister. And you're writing to Dr.
 2 O'Grady as President of the NLMA, "I'm writing
 3 to advise that Treasury Board recently
 4 approved my department's proposal to extend
 5 the oncology stipend under the salaried
 6 physician policy to the province's salaried
 7 pathologists". And the effective date, as you
 8 pointed out is dated February 26, 2007. "I
 9 want to thank the NLMA and Doctor Denic for
 10 assisting my officials and our external
 11 consultant in bringing this matter to a
 12 successful conclusion". The external
 13 consultant, I take it, being Doctor Raymond
 14 Maung?
 15 MR. WISEMAN:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. "Should you wish further details on
 19 implementation on the salary adjustment, then
 20 they can contact Dr. Cathy Bradbury." So,
 21 this issue was finally resolved, I take it,
 22 May 18, 2007 and was retroactive to February
 23 26, 2007.
 24 MR. WISEMAN:
 25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. Do you know why it took so long to have this

3 issue addressed?

4 MR. WISEMAN:

5 A. No, I don't.

6 CHAYTOR, Q.C.:

7 Q. And have you made an inquiries of anyone to

8 determine that history?

9 MR. WISEMAN:

10 A. No, I haven't.

11 CHAYTOR, Q.C.:

12 Q. And the money that came, we talked about

13 yesterday in terms where the money came from

14 in terms of the provincial funding of this

15 stipend, I understand it didn't come from a

16 line item on the budget. It was from the

17 extra money that had been included in the

18 budget for physician salaries?

19 MR. WISEMAN:

20 A. It come from the physician salary budget item,

21 yes.

22 CHAYTOR, Q.C.:

23 Q. Okay.

24 MR. WISEMAN:

25 A. As I indicated yesterday, that the--in last

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1 years budgetary process which would have led

2 us up to the budget announcement in March or

3 April, whenever it was, would have

4 contemplated this event and would have

5 acknowledged that there was sufficient money

6 in there to cover it. Had it not, it would

7 have identified it as a additional request in

8 the budgetary process.

9 CHAYTOR, Q.C.:

10 Q. Could we see P-0165, please? And Mr. Wiseman,

11 you may not have seen this document before.

12 This is a letter that was written, it's

13 stamped April 18, 2006 and actually, I think

14 there's a second page. The second page, page

15 two--it's a letter written to Honourable John

16 Ottenheimer, who was then Minister of Health

17 and Community Services, February 1, 2006. And

18 the letter is written by a Doctor Banerjee,

19 whose name I take it by now is familiar to

20 you?

21 MR. WISEMAN:

22 A. Uh-Hm.

23 CHAYTOR, Q.C.:

24 Q. And this is a letter written regarding

25 laboratory medicine specialists, pathologists

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1 in Newfoundland. Have you seen this letter

2 before, Mr. Wiseman? Was this brought to your

3 attention?

4 MR. WISEMAN:

5 A. Just very recently.

6 CHAYTOR, Q.C.:

7 Q. Okay, and I take it when you say "very

8 recently", it's since May 18th, 2007?

9 MR. WISEMAN:

10 A. Yes, very much so.

11 CHAYTOR, Q.C.:

12 Q. So the pathologist stipend had already been --

13 had already been dealt with prior to this?

14 MR. WISEMAN:

15 A. Yes.

16 CHAYTOR, Q.C.:

17 Q. To your attention?

18 MR. WISEMAN:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. And he refers to the issue of the ER/PR issue

22 in writing this letter, and I appreciate he's

23 writing this on the letterhead of the Canadian

24 Association of Pathologists, but in the second

25 paragraph he indicates, "You have already

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1 experienced a recent example of the effects of

2 not investing in high quality pathology when

3 the errors in breast cancer estrogen receptor

4 status were discovered affecting hundreds of

5 patients in your province", and page one is a

6 reply from Tom Osborne because by then he's

7 the Minister and he takes exception to what he

8 understood Dr. Banerjee to be saying about the

9 quality of pathologists employed by Eastern

10 Health. So while Dr. Banerjee in this letter

11 has drawn to the Minister of the day, to this

12 attention his opinion that you've already

13 experienced a recent example of the effects of

14 not investing in high quality pathology, that

15 issue was never brought to your attention?

16 MR. WISEMAN:

17 A. No.

18 CHAYTOR, Q.C.:

19 Q. And the timing of -- the timing of having the

20 pathology remuneration issue finally dealt

21 with, mid May of 2007, is it at all connected

22 with the ER/PR issue?

23 MR. WISEMAN:

24 A. As you can see from the dates of the

25 documentation, the report was received in the

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1 Department, you know, that was commissioned by
 2 the Department to help them form that decision
 3 at the end of January, so obviously the
 4 discussion that had taken place between the
 5 Department of Health and Community Services
 6 and Treasury Board in that period from the
 7 receipt of the report and the actual writing
 8 of that letter on the 18th, and so obviously
 9 there had been a fair discussion back and
 10 forth during that period. So the May 18th --
 11 you know, the letter going out on May 18th,
 12 you know, coinciding with the discussion that
 13 took place on May 15th or 16th about ER/PR was
 14 more of a coincidence. It was a natural
 15 unfolding of a process that had been well
 16 started well in advance of that, and was now
 17 just advanced to that point where, you know, a
 18 decision was able to be made.

19 CHAYTOR, Q.C.:
 20 Q. Thank you.

21 THE COMMISSIONER:
 22 Q. It's quarter to five. Is this a convenient
 23 time to break for the day?

24 CHAYTOR, Q.C.:
 25 Q. This is a convenient time, Commissioner,

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1 because I'm about to go on to a new area.

2 THE COMMISSIONER:
 3 Q. All right.

4 CHAYTOR, Q.C.:
 5 Q. I'll probably need -- I probably will be an
 6 hour, an hour and a half with the Minister on
 7 Monday.

8 THE COMMISSIONER:
 9 Q. On Monday?

10 CHAYTOR, Q.C.:
 11 Q. On Monday.

12 THE COMMISSIONER:
 13 Q. All right then. Even allowing for examination
 14 by other counsel, then I'm assuming that we
 15 can proceed with the next witness as well on
 16 Monday.

17 CHAYTOR, Q.C.:
 18 Q. Monday afternoon, I would think.

19 THE COMMISSIONER:
 20 Q. And we'll govern ourselves accordingly. All
 21 right, thank you. We'll see you all at 9:30
 22 on Monday.

23 Upon conclusion.

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1 CERTIFICATE

2 I, Judy Moss, hereby certify that the foregoing is
 3 a true and correct transcript in the matter of the
 4 Commission of Inquiry on Hormone Receptor Testing,
 5 heard on the 11th 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 11th day of April, A.D., 2008

13 Judy Moss

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