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| <p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">APRIL 14, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C. Commission Co-counsel Mandy Woodland Commission Co-counsel</p> <p>Rolf Pritchard/Jenny Chai Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury Doctors Kara Laing et al</p> <p>Daniel Simmons Eastern Regional Integrated Health Authority</p> <p>Pamela Taylor. Members of the Breast Cancer Testing Class Action</p> <p>Mark Pike NL Medical Association Jennifer Newbury Canadian Cancer Society (NL Division) David Eaton Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p> | <p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBITS P-0286 THROUGH P-0290 Pg. 4</p> |
| <p style="text-align: center;">TABLE OF CONTENTS</p> <p>MR. ROSS WISEMAN - RESUMES THE STAND</p> <p>Examination by Sandra Chaytor, Q.C. Pgs. 4 - 257</p> <p>Examination by Mr. Daniel Simmons Pgs. 257 - 334</p> <p>Discussion Pgs. 334 - 336</p> <p>Certificate</p> | <p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER: 2 Q. Please be seated. Ms. Chaytor? 3 MR. ROSS WISEMAN, EXAMINATION-IN-CHIEF BY SANDRA CHAYTOR, 4 Q.C. (CONTINUED) 5 CHAYTOR, Q.C.: 6 Q. Thank you, Commissioner. Good morning, Mr. 7 Wiseman. 8 MR. WISEMAN: 9 A. Good morning. 10 CHAYTOR, Q.C.: 11 Q. Commissioner, first thing this morning, there 12 are five new exhibits that I would ask, 13 please, to have entered. They are P- 0286 14 through to P-0290, inclusive. 15 THE COMMISSIONER: 16 Q. Okay. 17 CHAYTOR, Q.C.: 18 Q. And copies have been provided to Mr. Wiseman 19 and to the counsel for the parties. 20 THE COMMISSIONER: 21 Q. All right, Exhibits P-0286 through to P- 0290 22 entered 23 EXHIBITS P-0286 THROUGH P-0290 ENTERED INTO EVIDENCE. 24 CHAYTOR, Q.C.: 25 Q. Mr. Wiseman, what percentage of the patients</p> |

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1 involved in the ER/PR retesting were patients
 2 of the other three health care authorities
 3 other than Eastern Health?
 4 MR. WISEMAN:
 5 A. I don't recall the--I'm not sure of the
 6 breakdown by region, but you're accurate in
 7 they would have been patients of each of the
 8 four regional health authorities. But as I
 9 recall it, the bulk of them were from the
 10 Eastern Region.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, so more than 50 percent from the Eastern
 13 Region. Do you know if it was close to the
 14 50/50 mark?
 15 MR. WISEMAN:
 16 A. It might--I would only be speculating. I
 17 don't really recall. That information is
 18 available.
 19 CHAYTOR, Q.C.:
 20 Q. Yes.
 21 MR. WISEMAN:
 22 A. But I don't recall it as we speak.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. I'm wondering if any of the other
 25 health care authorities, we've heard how

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1 Eastern Health had input into information that
 2 went into your briefing notes and were
 3 contacted in terms of any information that was
 4 required on the issue. I'm wondering do you
 5 know whether or not the other three
 6 authorities were contacted for any information
 7 MR. WISEMAN:
 8 A. I couldn't say, I don't know.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. If we could turn, please, to P-0287?
 11 Mr. Wiseman, last day I was asking you about
 12 your recollections for a meeting that occurred
 13 on or about June 14th, 2007, and we understood
 14 that this meeting involved CEOs and board
 15 chairs of the four regions. And what we have
 16 here in P-0287 is excerpts from minutes of
 17 Executive Management Meeting of Eastern
 18 Health. And this meeting was held June 13th,
 19 2007. And it makes reference to the upcoming
 20 meeting under 1.6 on page 4.
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. You have that? Okay. And it says here the
 25 CEO, and the CEO in this context would be the

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1 CEO of Eastern Health. "The CEO is scheduled
 2 to meet with the Deputy Minister of Health and
 3 Community Services, board chairs and CEOs,"
 4 and we assume that's the board chairs and CEOs
 5 of the other regions, as well as the board
 6 chair of Eastern Health, "on June 14th, 2007
 7 and requested input on key messages." And
 8 then there's a list of key messages in this
 9 document. And again, this is taken, and I
 10 understand this is not a document that you
 11 would have been familiar with prior to me
 12 showing this to you this morning. This is an
 13 Eastern Health document. But my only purpose
 14 is to see whether or not any of those issues
 15 that are enumerated here, in fact, were
 16 discussed at the meeting on June 14th, 2007
 17 and to see if this jogs your memory as to what
 18 the nature of the discussion was. And even
 19 though it doesn't mention--it says in the
 20 heading it's a CEO meeting with Minister and
 21 Deputy Minister, but in the part I just read
 22 to you didn't mention Minister. But, Mr.
 23 Wiseman, you did attend this meeting?
 24 MR. WISEMAN:
 25 A. Yes, yes.

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1 CHAYTOR, Q.C.:
 2 Q. Okay.
 3 MR. WISEMAN:
 4 A. This wouldn't have been the agenda in and of
 5 itself for a meeting with board chairs and
 6 CEOs. I wouldn't have seen it presented in
 7 this fashion. As I'm reading this, it looks
 8 like they're soliciting input from their
 9 senior people to inform a discussion that may
 10 occur with myself and the--and included myself
 11 and the Deputy.
 12 CHAYTOR, Q.C.:
 13 Q. Yes, I think that's a fair assessment of this.
 14 MR. WISEMAN:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. If I could just then, the first item is
 18 "Education to distinguish between errors
 19 versus variation in medical treatment." Do
 20 you recall any discussion around that at your
 21 June 14th meeting?
 22 MR. WISEMAN:
 23 A. We may have had a discussion around--you know,
 24 the ER/PR issue was a topic of conversation,
 25 but I think the--whether it was framed in that

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1 fashion. We had a general discussion in terms
 2 of, you know, there's some observations that
 3 there may have been some--you know, and this
 4 is one of the comments that had been made
 5 periodically. For example, even though there
 6 may have been a change in the test result when
 7 it was done the second time, there may or may
 8 not have been a resulting change in treatment.
 9 And I think, you know, there was--there had
 10 been several discussions in around this issue
 11 since last year, the--wanted to distinguish
 12 between those two observations so that there's
 13 a clear understanding of that. So it may have
 14 come up in that context.
 15 CHAYTOR, Q.C.:
 16 Q. And, Mr. Wiseman, would there have been an
 17 agenda for this meeting?
 18 MR. WISEMAN:
 19 A. Generally what--there would have been.
 20 Generally the board chairs meetings that we've
 21 had, or the CEOs and board chairs have met,
 22 what they tend to involve is the CEOs attend a
 23 meeting during that day, so they have an
 24 agenda they deal with and the then I join
 25 them, tend to be later in the evening, and we

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1 conclude the business piece of the meeting
 2 with my attendance. And there is some things
 3 that we'll have identified that they want to
 4 talk to me about while I'm there because some
 5 of the items they would have addressed during
 6 their meetings earlier in the day. And so
 7 generally there's a--there's a couple of times
 8 I recall there being a formal agenda and
 9 there's been also occasion, I believe, where
 10 there wasn't a formal agenda but we had some
 11 understanding of the points that we would talk
 12 about in advance. But it's not as formalized
 13 as this, as, for example, the meeting that
 14 we're looking at or the minutes we're looking
 15 at here now reflect a very formalized agenda
 16 with a very structure to their minute taking.
 17 CHAYTOR, Q.C.:
 18 Q. Yes.
 19 MR. WISEMAN:
 20 A. And the minutes, the meetings that I would
 21 have with their board chairs wouldn't be
 22 structured in a formal fashion like this, for
 23 example.
 24 CHAYTOR, Q.C.:
 25 Q. Would there be minutes that would come out of

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1 that meeting? We haven't seen them.
 2 MR. WISEMAN:
 3 A. No. And I have--I don't--I haven't seen any,
 4 either, so I doubt very much if there has
 5 been.
 6 CHAYTOR, Q.C.:
 7 Q. Is it the normal practice that there would be
 8 minutes out of the meetings with the regional
 9 boards?
 10 MR. WISEMAN:
 11 A. There may be some notes that the Deputy may
 12 have taken about some of the outcomes of that,
 13 but there wouldn't have been an exchange of
 14 minutes that would have taken place.
 15 CHAYTOR, Q.C.:
 16 Q. Yes. That was my other question. I take it
 17 you don't have any notes personally on -
 18 MR. WISEMAN:
 19 A. No, I don't.
 20 CHAYTOR, Q.C.:
 21 Q. With respect to this meeting or any of the
 22 meetings that I've asked you about?
 23 MR. WISEMAN:
 24 A. No, I don't.
 25 CHAYTOR, Q.C.:

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1 Q. No. And who would normally take minutes for
 2 you in those meetings?
 3 MR. WISEMAN:
 4 A. If there's, you know, some action items to be
 5 coming out of that meeting, the official that
 6 would have accompanied me to those meetings
 7 would have made some notes of anything that we
 8 would have needed to action as a department
 9 coming out of that meeting.
 10 CHAYTOR, Q.C.:
 11 Q. So in this case that would have been Robert
 12 Thompson?
 13 MR. WISEMAN:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And so perhaps Mr. Thompson has minutes
 17 or notes?
 18 MR. WISEMAN:
 19 A. Yes, you may--he may just have that, yes.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. All right, so the next item here was
 22 "Move to adjust culture." Do you recall that
 23 being discussed at the meeting of June 14th?
 24 MR. WISEMAN:
 25 A. No, that's not something that I have any

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1 recollection -
 2 CHAYTOR, Q.C.:
 3 Q. The next item, the next item is "Potential
 4 negative impact on leadership, accountability
 5 and decision making as a result of intense
 6 media interest." Was that discussed?
 7 MR. WISEMAN:
 8 A. There was a discussion around, you know, the
 9 implications for, you know, the concern that,
 10 you know, there's--if there is an intense, you
 11 know, negative discussion around the health
 12 system in general, how that might impact on
 13 abilities to, you know, recruit individuals,
 14 to retain, you know, capable competent people
 15 that may already be in the system.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And the fourth bullet, "HIROC's concern
 18 with full disclosure and the impact on
 19 insurability." Was that discussed?
 20 MR. WISEMAN:
 21 A. I can't recall having any--having discussions
 22 around issues around insurability and that
 23 kind of thing.
 24 CHAYTOR, Q.C.:
 25 Q. And is that something that if it had been

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1 discussed, you would feel confident in being
 2 able to recall?
 3 MR. WISEMAN:
 4 A. Yeah, and I mean, that's something that would
 5 be fairly significant. I mean, I wouldn't, as
 6 I've said here before, the issue around
 7 liability here and issues around, you know,
 8 protecting insurability, you know, that's not
 9 been an area of my focus, you know.
 10 CHAYTOR, Q.C.:
 11 Q. Okay.
 12 MR. WISEMAN:
 13 A. So if it had--you know, if--it was one of
 14 these things that I don't recall having a
 15 lengthy discussion around. If it had ever
 16 been broached then as casually as I just
 17 dismissed it with you then in terms of that's
 18 not a topic that I would have engaged in a
 19 lengthy discussion around with respect to how
 20 might we do this. It clearly would have been
 21 an issue that would not have -
 22 CHAYTOR, Q.C.:
 23 Q. Has anyone ever brought up with you the topic
 24 of HIROC's concern with full disclosure and/or
 25 the impact on insurability?

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1 MR. WISEMAN:
 2 A. I can't recall ever having that discussion at
 3 all and that's something that would stand out
 4 for me if I ended up having a lengthy
 5 discussion around that topic.
 6 CHAYTOR, Q.C.:
 7 Q. But have you had--forget lengthy.
 8 MR. WISEMAN:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. Have you had any discussion around that topic?
 12 MR. WISEMAN:
 13 A. Not to my recollection.
 14 CHAYTOR, Q.C.:
 15 Q. Has that ever been brought to your attention?
 16 MR. WISEMAN:
 17 A. Someone may have made it as an observation
 18 that this could be a potential outcome, but
 19 that's not a topic that I would have engaged
 20 anyone in a discussion.
 21 CHAYTOR, Q.C.:
 22 Q. And who would have brought that up?
 23 MR. WISEMAN:
 24 A. I mean, I say if because I don't--it may have
 25 come up in the context of board chairs and

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1 CEOs, but it's not a topic that I had a
 2 discussion around.
 3 CHAYTOR, Q.C.:
 4 Q. Okay.
 5 MR. WISEMAN:
 6 A. Someone may have made it as an observation,
 7 but I wouldn't have engaged in a conversation
 8 around it.
 9 CHAYTOR, Q.C.:
 10 Q. And to your knowledge has anyone else in your
 11 department engaged in any conversation around
 12 it?
 13 MR. WISEMAN:
 14 A. Not to my knowledge. But then, I wouldn't
 15 necessarily have that knowledge if others were
 16 having the conversation.
 17 CHAYTOR, Q.C.:
 18 Q. Mr. Wiseman, do you know what's being referred
 19 to here as HIROC's concern with full
 20 disclosure and the impact on insurability?
 21 MR. WISEMAN:
 22 A. Unless they're talking about--I mean, I just--
 23 by the statement itself HIRCO is an insurance
 24 company who provides the liability coverage
 25 for the health system. So I'm assuming that

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1 they're talking about, you know, the whole
 2 issue around ER/PR and, you know, it's akin to
 3 the conversation that they may have had or
 4 Eastern Health or the CEO of Eastern Health,
 5 rather, had with me back in May of last year
 6 with respect to the rationale why they didn't
 7 have a fuller disclosure in December of '06.
 8 So it's obviously in that same context.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. The next one is, "Implications for
 11 recruitment in an atmosphere of blame." And I
 12 take it that is similar to what you referred
 13 to in your answer on potential negative impact
 14 on leadership accountability and decision
 15 making?
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. So concerns regarding recruiting medical
 20 physicians or medical personnel, including
 21 physicians?
 22 MR. WISEMAN:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Difference between patient disclosure and

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1 public disclosure, was that a topic of
 2 discussion at the meeting on June 14th?
 3 MR. WISEMAN:
 4 A. I'm not certain whether it came up here, but I
 5 know there has been discussions around that
 6 with respect to, you know, the patient
 7 disclosure versus the public disclosure. And
 8 that's come up a couple of times in
 9 discussions that I've had in some cases with
 10 some media in that there have been instances
 11 where, you know, patients, I've indicated that
 12 the patients were contacted even though we may
 13 not have made a public disclosure of it at
 14 that same moment, and so there may have been
 15 some delays in patient disclosure and public
 16 disclosure.
 17 CHAYTOR, Q.C.:
 18 Q. Was there discussion around when and how it's
 19 appropriate to make patient disclosure versus
 20 public disclosure?
 21 MR. WISEMAN:
 22 A. I can't recall having that kind of a
 23 conversation.
 24 CHAYTOR, Q.C.:
 25 Q. So this meeting wasn't about looking at best

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1 practices on a go forward basis?
 2 MR. WISEMAN:
 3 A. No, no, no, no. You know, the discussion--
 4 now, there may have been, during the day with
 5 the Deputy and the CEO some discussions of
 6 that nature, but during my presence with the,
 7 you know, the board chairs we wouldn't have
 8 necessarily got into that level of discussion
 9 around how we might operationalize that.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. And so you would have--you would have
 12 only attended the last part of the meeting, is
 13 that right?
 14 MR. WISEMAN:
 15 A. Generally what would have happened is that
 16 there's there meetings during the day and then
 17 I, my experience has been since I've been
 18 Minister, that I will join them and we'll have
 19 dinner and a business meeting that runs into
 20 the evening, and that tends to be the process.
 21 CHAYTOR, Q.C.:
 22 Q. And so how long would you be there, how long
 23 would you be in attendance?
 24 MR. WISEMAN:
 25 A. Some of them have gone from sixish to 11, some

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1 of them have been shorter than that, and so
 2 it's varied, the three or four that I've had
 3 thus far.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. So in terms of a discussion or what the
 6 full discussion may have been, Mr. Thompson
 7 should be in a better position to address
 8 that?
 9 MR. WISEMAN:
 10 A. Yeah, there may have been some discussion
 11 prior to my arrival that involved the CEOs.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. "Need for highly skilled human
 14 resources to accompany major capital equipment
 15 investments in rural areas." Do you recall
 16 that being discussed?
 17 MR. WISEMAN:
 18 A. The discussion around capital investment, yes,
 19 we've had that, equipment issues and -
 20 CHAYTOR, Q.C.:
 21 Q. And would any of that have been relevant to
 22 the ER/PR issue?
 23 MR. WISEMAN:
 24 A. It may have been tied to the issue of
 25 information technology, but we've had--I've

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1 had several discussions with CEOs and board
 2 chairs in and around capital investment, both
 3 from an information technology perspective and
 4 also from a medical equipment perspective.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. "Location of services", was that
 7 discussed and, if so, in the context of the
 8 ER/PR issue?
 9 MR. WISEMAN:
 10 A. Not in the contest of ER/PR, no.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. So that would not have involved any
 13 discussion about Eastern Health resuming the
 14 ER/PR testing for the entire province?
 15 MR. WISEMAN:
 16 A. Not at all.
 17 CHAYTOR, Q.C.:
 18 Q. No. "Increase in potential liability issues
 19 as a result of politicalization." Do you know
 20 what that means?
 21 MR. WISEMAN:
 22 A. No, I'm not certain.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. Do you know whether or not it was
 25 discussed in your presence at the meeting?

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1 MR. WISEMAN:
 2 A. No.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. If we could look then at 0286, please?
 5 And other than--before we leave that, Mr.
 6 Wiseman, other than what is listed here, has
 7 this help jog your memory at all as to what
 8 other issues may have been discussed at the
 9 June 14th meeting, obviously in relation to
 10 the ER/PR issue?
 11 MR. WISEMAN:
 12 A. No. I mean, the, I mean, when we've had
 13 discussion with CEOs or I've been involved in
 14 discussion with the CEOs and the chairs
 15 collectively with respect to the issue there's
 16 been concerns around the, you know, the
 17 implications for people's confidence in their
 18 health system. You know, we talked about it
 19 in the context of, you know, my commentary
 20 around, you know, the issues around
 21 communication, the importance of, you know,
 22 the communication that takes place between the
 23 Department and the boards themselves, the
 24 importance of the communication that takes
 25 place between the boards, the authorities and

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1 their patients and the communities at large,
 2 so we've had some general discussions like
 3 that on occasion. And there's--you know,
 4 that's been the general thrust of it. We
 5 haven't, in those meetings, you know, we
 6 haven't had a, you know, an operational
 7 discussion with respect to, you know, trying
 8 to explore what might have gone wrong here, it
 9 hasn't been that level of discussion with the
 10 board chairs.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And I asked you yesterday and I'd just
 13 like to confirm now after looking at this
 14 document, you still have no recollection of
 15 any concerns being brought to your attention
 16 by the CEOs or board chairs at that meeting or
 17 any subsequent meeting regarding how the ER/PR
 18 issue was handled?
 19 MR. WISEMAN:
 20 A. I mean, there's been--I've had some--the very
 21 specific issue having a conversation with Ms.
 22 Dawe about it one time as chair of the Eastern
 23 Board, you know, around, you know, the
 24 comments that I may make publicly, may make
 25 publicly that may bring into question, you

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1 know, the management role that Eastern Health
 2 had and how this might have been managed and
 3 some concern in around that particular issue.
 4 But that was very specific to, you know,
 5 Eastern Health and much more to do with, you
 6 know, the role and relationship that I, as a
 7 Minister, would have with the board chair and
 8 with that board and in my carrying out my role
 9 as a Minister and they're carrying out their
 10 role as a board and that would apply to the ER
 11 issue but also would apply to other issues of
 12 our responsibilities.
 13 CHAYTOR, Q.C.:
 14 Q. Yes. And my question was more aimed at the
 15 other three health care authorities, whether
 16 or not they addressed any concerns or brought
 17 to your attention any concerns about the
 18 handling or management of the ER/PR issue?
 19 MR. WISEMAN:
 20 A. Not that I can recall.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. P-0286, please? And again, Mr.
 23 Wiseman, this is an excerpt from the minutes
 24 of Executive Management Meeting of Eastern
 25 Health, May 16th, 2007. And we can see the

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1 number of people from Eastern Health who were
 2 in attendance. And then on the second page of
 3 the exhibit, which is page 5 from the minutes,
 4 2.2.1, "Estrogen, progesterone testing. There
 5 has been significant media attention related
 6 to the ER/PR receptor testing. On 15th, May,
 7 2007 George Tilley, Dr. Howell and Heather
 8 Predham briefed the Minister on the issue."
 9 Mr. Wiseman, you told us last day or the day
 10 before that that you did recall having a
 11 briefing by George Tilley on May 15th?
 12 MR. WISEMAN:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Do you recall that Dr. Howell and Heather
 16 Predham were also present?
 17 MR. WISEMAN:
 18 A. I had said, I might have indicated there were
 19 officials there, too, but I wasn't sure if Dr.
 20 Howell, but I knew there was another lady, but
 21 I wasn't sure of her name.
 22 CHAYTOR, Q.C.:
 23 Q. So I take it it may well have been Heather
 24 Predham?
 25 MR. WISEMAN:

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1 A. Yes, quite very well have been, yes.
 2 CHAYTOR, Q.C.:
 3 Q. Do you know Heather Predham?
 4 MR. WISEMAN:
 5 A. No.
 6 CHAYTOR, Q.C.:
 7 Q. And so would this have been the only occasion
 8 on which you would have met with her?
 9 MR. WISEMAN:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And Dr. Howell being in attendance, if that
 13 were to be the case, you don't take issue with
 14 that?
 15 MR. WISEMAN:
 16 A. No, no, no. That would be quite natural and
 17 normal.
 18 CHAYTOR, Q.C.:
 19 Q. Did anyone other than Mr. Tilley provide
 20 information to you on May 15th?
 21 MR. WISEMAN:
 22 A. There would have been an exchange around the
 23 table and I suspect anyone in the room would
 24 have provided some information because they
 25 would all be contributing to trying to give me

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1 as much information as they had.
 2 CHAYTOR, Q.C.:
 3 Q. Do you know Heather Predham's role with
 4 Eastern Health?
 5 MR. WISEMAN:
 6 A. I understand she--and I don't know the exact
 7 title, but I know she's involved with the
 8 quality assurance program.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And do you recall whether or not she
 11 was part of the discussion, did she provide
 12 you with any information on May 15th?
 13 MR. WISEMAN:
 14 A. She may very well have been, because it was a-
 15 -you know, those that sat around the table
 16 would have all been contributing, you know, to
 17 the extent that they either were asked to or
 18 that they had, the topic being discussed, they
 19 were the lead on it. There might have been
 20 any number of people would have shared it,
 21 yes.
 22 CHAYTOR, Q.C.:
 23 Q. And Dr. Howell, what did you understand his
 24 role to be with Eastern Health and what did he
 25 contribute to the discussion?

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1 MR. WISEMAN:
 2 A. He's the Vice-President of Medical Services
 3 and in that capacity the laboratory services
 4 report administratively to him and so he has
 5 an administrative responsibility for the
 6 laboratory area.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. P-0288. And again, this is the first
 9 page of the minutes of a meeting of Executive
 10 Management of Eastern Health held July 9th,
 11 2007. And again, you can see the list of
 12 people who are indicated there. And at this
 13 point in time Louise Jones is now the interim
 14 President and CEO. And under "Business," No.
 15 1, business, "Board chair discussion with
 16 Minister of Health and Community Services." in
 17 bold. "Louise Jones advised that" and there's
 18 a mistake in the minutes there, "that the Joan
 19 Dawe, Board Chair, contacted the Minister
 20 requesting a meeting. She provided him with a
 21 brief overview of executive's concerns
 22 regarding the organization's relationship and
 23 the lack of partnership with government."
 24 Now, Mr. Wiseman, this appears to be referring
 25 to a meeting between yourself and Ms. Dawe in

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1 which she's expressing "executive's concerns,"
 2 presumably executive of Eastern Health,
 3 "concerns regarding the organization's
 4 relationship and the lack of partnership with
 5 government." And presumably this happens
 6 sometime prior to July 9th, 2007. Do you
 7 recall that meeting?
 8 MR. WISEMAN:
 9 A. Ms. Dawe and I did have a conversation around-
 10 -you know, and I just alluded to a moment ago
 11 with respect to my role as a Minister and
 12 their role as a board in running the affairs
 13 of Eastern Health and any, you know, kind of
 14 public comments that I might make, you know,
 15 that might be, you know, might undermine
 16 something they may be trying to do. Secondly,
 17 and as this ER/PR issue was unfolding together
 18 with the Burin radiology issue that we dealt
 19 with last year, the Department was more
 20 actively engaged and involved in those issues
 21 when it became problematic than historically
 22 the Department would be on a normal
 23 operational basis.
 24 CHAYTOR, Q.C.:
 25 Q. And Ms. Dawe expressed concern to you that the

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1 Department had become more actively engaged?
 2 MR. WISEMAN:
 3 A. Well, you know, raised the question around,
 4 you know, the implications for that, because
 5 it's, you know, the, you know, the historic
 6 relationship between the Department and the
 7 authorities is not one where the Department is
 8 involved in the operational side of things and
 9 so any time that there's a belief or a sense
 10 that that might start to change, then
 11 obviously the board chair would, you know,
 12 feel it, appropriate that she would raise it
 13 with me.
 14 CHAYTOR, Q.C.:
 15 Q. And what exactly were the issues of concern,
 16 what was it that she felt the Department was
 17 doing which was crossing the line, if you
 18 will, into more the operational side?
 19 MR. WISEMAN:
 20 A. I'd recall us having a, you know, discussion
 21 around very specific examples, but it was a
 22 very kind of a general discussion. And both
 23 Ms. Dawe and I both understood, you know,
 24 generally what the message was that she was
 25 trying to convey to me and I, and so that was

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1 the general nature of the discussion.
 2 CHAYTOR, Q.C.:
 3 Q. What was your response?
 4 MR. WISEMAN:
 5 A. I mean, fundamentally as a, No. 1, I don't
 6 think we got ourselves involved in the
 7 operation of the board. There were a couple
 8 of significant issues, obviously the ER/PR
 9 issue which has been the topic we've been
 10 discussing here in recent days; the issue of
 11 the Burin radiology event. Both events had,
 12 you know, significant impacts on patients and
 13 their families. Both events created a--you
 14 know, there were some issues in and around the
 15 manner in which the process was being managed.
 16 And so the Department was more actively
 17 engaged. But it wasn't a reflection of any
 18 intent the Department to, you know, to assume
 19 an operational role within the authorities.
 20 CHAYTOR, Q.C.:
 21 Q. So just to be clear, was Eastern Health,
 22 through its board chair, objecting to the
 23 Department being involved in the manner in
 24 which the Department was involved, in the
 25 aftermath of the ER/PR issue?

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1 MR. WISEMAN:
 2 A. Ms. Dawe didn't characterize it as they're
 3 objecting, but wanting to have a discussion
 4 with me around, you know, establishing a clear
 5 understanding of what that relationship might
 6 want to be, if I had some desire or belief
 7 that as a Minister that that, you know, normal
 8 practice, past practice was going to be
 9 changing on my watch or some kind or if I
 10 envisaged a very different kind of working
 11 relationship then they have historically had.
 12 CHAYTOR, Q.C.:
 13 Q. And was there discussion around the new
 14 legislation and the clarity of the roles under
 15 the new legislation?
 16 MR. WISEMAN:
 17 A. I'm not sure that we -- I don't recall us
 18 using the legislation as a reference point to
 19 establish a that, clear understanding. It was
 20 a general discussion, but, you know, I clearly
 21 understood the issue she was raising with me,
 22 and I'd like to think that after the
 23 discussion was over, you know, that we had a
 24 clear understanding of how I viewed that
 25 relationship.

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1 CHAYTOR, Q.C.:

2 Q. And did you or your Department in any way

3 change its management or handling of the ER/PR

4 issue from that point?

5 MR. WISEMAN:

6 A. No.

7 CHAYTOR, Q.C.:

8 Q. So you didn't see any concern with how the

9 Department was dealing with the issue?

10 MR. WISEMAN:

11 A. No.

12 CHAYTOR, Q.C.:

13 Q. And I take it while Ms. Dawe may not have been

14 expressing objection on the part of Eastern

15 Health as to the Department's involvement, it

16 would be fair to say they had some concerns

17 about the Department's involvement?

18 MR. WISEMAN:

19 A. That would be fair, yes.

20 THE COMMISSIONER:

21 Q. Ms. Chaytor, just because it happens to be on

22 my mind and was something I wanted this

23 witness to address, could we explore a little

24 the Minister's view of what the Minister's

25 role is versus what the Board's role is in

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1 these Authorities.

2 CHAYTOR, Q.C.:

3 Q. Yes, okay, thank you. So, Mr. Wiseman, what

4 is your understanding of what your role is vis

5 a vis the Authorities, and what the role of

6 the Board -- the Board of Trustees, what would

7 their role be?

8 MR. WISEMAN:

9 A. The Board -- just to back it up a little bit,

10 the Boards are established through their --

11 they have their own legislation, which I've

12 alluded to earlier, that the new legislation

13 of the Regional Health Authorities has an Act

14 proclaimed April 1st of this year, so they now

15 have a piece of legislation to establish them

16 as an independent corporation, and they --

17 they are mandated to provide a range of

18 programs and services in their respective

19 regions of the province and they provide those

20 with -- the Department of Health and Community

21 Services on behalf of the Government provides

22 the budget process, budget for that, and --

23 but in terms of the delivery of those programs

24 and services, and how they go about doing

25 that, the delivery model and the staffing

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1 associated with that, they makes those kinds

2 of decisions themselves as an Authority.

3 Within the Authorities themselves, the Boards

4 of Trustees, they themselves deal with policy

5 matters and they then in turn will hire a CEO

6 and have an executive team around them to

7 guide the day to day operation of the

8 Authority as they deliver those programs and

9 services. The Trustees themselves through

10 various reporting mechanisms they would have

11 within their structures, various committee

12 structures they would have, you know,

13 information would then flow back up from the

14 administration into the Board itself and the

15 trustees. The trustees would be involved in

16 policy related matters and trustees, as a

17 matter of course, would not be involved in the

18 day to day operation of either one of the

19 Authorities.

20 CHAYTOR, Q.C.:

21 Q. And your role?

22 MR. WISEMAN:

23 A. My role as a Minister is to facilitate that

24 process happening, obviously, but in terms of

25 the current legislation, also gives me the

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1 authority, if necessary, to provide direction

2 to the Board and then their legislation

3 indicates that they will respond to that

4 direction. That direction wouldn't be at an

5 operational level to determine whether or not,

6 you know, a particular surgery takes place on

7 Monday or Tuesday, it wouldn't be around how

8 many staff you would have, but it would be in

9 a much more broader context with respect to

10 programs and services.

11 CHAYTOR, Q.C.:

12 Q. Can you give us an example?

13 MR. WISEMAN:

14 A. Well, one extreme, for example, would be the -

15 - you know, we will have a surgical program in

16 Central Newfoundland and the Minister would

17 decide that there would be an orthopedic

18 surgery program in Gander. How the Board

19 delivers that in terms of the number of

20 surgeons they have, anesthesiologists they have,

21 nursing staff they may have, and the number of

22 operating rooms they may have, that will be

23 their call, they will make that decision. If

24 they were to decide they're going to modify

25 that in some fashion and only have it for two

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1 days a week versus five days a week, you know,
 2 as a Minister, I might, you know, think it's
 3 more appropriate that the service be a
 4 lengthier program and that they provide
 5 services on an extended period, and I may ask
 6 them to have that service extended beyond the
 7 current level. That kind of a -- that's the
 8 kind of position I use to illustrate a point.
 9 CHAYTOR, Q.C.:
 10 Q. And if and when an issue arises in terms of
 11 the provision of the services, something of
 12 the magnitude of what we've seen here with
 13 ER/PR, what if any involvement would the Board
 14 have in addressing that issue, and what if any
 15 involvement should the Department and you, as
 16 Minister, have involvement in?
 17 MR. WISEMAN:
 18 A. I think in this particular case in hindsight
 19 now, one of the things, for example, that I
 20 now recognize and will become a part of future
 21 practise, you know, there's an issue that's
 22 arisen with this particular issue here today
 23 where there was a coordination issue between
 24 the four regional health Authorities and the

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1 communication to patients, and I now recognize
 2 that when we have an adverse events that
 3 happens in one of our Authorities where we
 4 have a need for an intense management
 5 strategy, it may come up a little later on,
 6 but back in February we made some
 7 announcements about some changes we were going
 8 to make. One of those announcements was how
 9 we would manage adverse events in our
 10 Authorities, and one of the significant pieces
 11 of that I've now recognized as well to is that
 12 when it crosses over more than one health
 13 authority, we need to have -- take a greater
 14 leadership role in the Department to
 15 coordinate that kind of activity across the
 16 four Authorities so that we would have a more
 17 coordinated response. I use that to
 18 illustrate an involvement that I would
 19 envisage the Department becoming involved in
 20 an issue like ER/PR. In terms of the contact
 21 with the patients, the performing of the
 22 tests, and all the clinical assessments and
 23 decisions, they would be made by the
 24 Authorities. They have the expertise to do
 25 that.

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1 CHAYTOR, Q.C.:
 2 Q. Okay, and I will bring you to that February
 3 news release.
 4 THE COMMISSIONER:
 5 Q. Before we leave this point, I take it from
 6 your comments that essentially you see the
 7 role of the Minister as a, broadly speaking,
 8 person who provides policy directive on a sort
 9 of wide level for Boards, and that otherwise
 10 you see them as developing policy for your
 11 consideration which you may or may not accept,
 12 and the Authorities run the day to day
 13 operations of the institutions which they run,
 14 and the Department doesn't interfere unless it
 15 becomes a question of some magnitude. Can you
 16 help me with how something that gets to be so
 17 big that the Department might feel that it was
 18 the time to step in and get involved in the
 19 issue? How do you make that call?
 20 MR. WISEMAN:
 21 A. That's a fair question, Madam Commissioner.
 22 It's a judgment call, obviously. You know,
 23 the number of times that that would happen in
 24 the normal course of the operation of either
 25 one of our Authorities -- in an ideal world,

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1 that shouldn't happen at all. Recognizing
 2 that that's not reality, that there will be
 3 circumstance where there is a greater public
 4 interest, or that the issue at hand extends
 5 beyond the boundaries of one Authority, or
 6 that there is an issue where the Authority may
 7 have a view that may not necessarily be
 8 supported by Government in terms of how its
 9 delivering a program or service or how an
 10 issue is being managed, and the Department
 11 through my office would want to become more
 12 actively engaged with that Authority on the
 13 issue. So that would be an extreme --
 14 hopefully, an extreme circumstance.
 15 THE COMMISSIONER:
 16 Q. And that might differ with Minister to
 17 Minister in the sense that what one Minister
 18 might consider something of significant or
 19 large enough public interest to step in might
 20 not be the same as another Minister would
 21 consider.
 22 MR. WISEMAN:
 23 A. It's a bit of a judgment call, you're right,
 24 because it's not one of these things that you
 25 can write a policy that says when it falls in

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1 this category, and here's what characteristics
 2 it might have and it's the time for the
 3 Minister to step in. I think if we -- we have
 4 right now a mechanism in place where the CEO's
 5 of each of the four Authorities and the Deputy
 6 Minister in the Department are meeting either
 7 in person or via conference calling on a
 8 frequent basis so that we have -- there's a
 9 close connection, so the Department is engaged
 10 at the CEO level pretty closely to be aware of
 11 trends or issues as they emerge to be able to
 12 be dealt with, but the -- so, therefore, that
 13 -- the ability to be able to be a little more
 14 actively engaged and more proactive exists
 15 today versus in the past, it's a little closer
 16 working relationship now. So those events that
 17 happened where the Minister would have to have
 18 his officials get more actively engaged with
 19 an Authority in trying to manage through an
 20 issue should be less frequent, but when it
 21 does, there is some element -- there is some
 22 element here of where a judgment call will get
 23 made.
 24 THE COMMISSIONER:
 25 Q. Now what's the difference in your role as

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1 providing policy directives and the Board of
 2 Trustees, who as I understand it, also see
 3 their role as a policy directive role
 4 essentially?
 5 MR. WISEMAN:
 6 A. The -- by way of illustration, we would -- as
 7 a Department, for example, we would establish
 8 standards in the operation of -- the that's
 9 recently come across my desk, as we look at
 10 standards for personal care homes in the
 11 province, there's a serious --
 12 THE COMMISSIONER:
 13 Q. So provincial-wide standards?
 14 MR. WISEMAN:
 15 A. Provincial-wide standards for personal care
 16 homes. The Authorities then would take those
 17 standards and they would operationalize them
 18 and apply them across the entire province, and
 19 officials in my Department would be involved,
 20 and there would be consultation with the
 21 Authorities in the development of that policy,
 22 but that would be a provincial standard. The
 23 Authority would -- in relationship to that
 24 area, for example, the Authority would be
 25 involved in establishing policies around the

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1 budgetary process that would determine the
 2 allocation of resources for those programs,
 3 and they would develop those kinds of policy
 4 decisions. They would also -- policies that
 5 might pertain to some human resource
 6 practises, they would be within the Authority
 7 to do those things. Provincially through the
 8 President of Treasury Board there is a
 9 provincial wide collective bargaining process,
 10 so Government would be involved in the
 11 collective bargaining process for the
 12 employees of the health sector, but each
 13 Authority may have their own set of human
 14 resource policies and practises applying to
 15 their particular -- you know, the staff that
 16 they have working with them. So at the Board
 17 level, they would be responsible to ensure
 18 those kind of policies are in place, but at
 19 the provincial level, we would establish the
 20 collective bargaining conditions.
 21 THE COMMISSIONER:
 22 Q. And would it seem strange to you that the
 23 Department would have knowledge of an event of
 24 major public interest before the Board would?
 25 MR. WISEMAN:

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1 A. That would be -- that would be unusual. If
 2 there was a -- if you're a Board Chair and you
 3 have a CEO, your expectation would be that if
 4 there is a critical issue facing the
 5 organization, that the expectation would be
 6 that you would advise your Board through your
 7 Chair, and then as part of managing that
 8 issue, you're working in unison with the
 9 Department of Health and Community services
 10 and you'd continue to do that in your
 11 operational role, but clearly the expectation
 12 I would see any Chair having is that that
 13 information would be -- the Chair would be
 14 advised, and the Board then through the Chair
 15 would become aware of it.
 16 THE COMMISSIONER:
 17 Q. Thank you. Sorry, Ms. Chaytor.
 18 CHAYTOR, Q.C.:
 19 Q. Thank you, Commissioner. Arising from the
 20 Commissioner's questions, Mr. Wiseman, what
 21 factors are relevant in determining when and
 22 how you would make the judgment call?
 23 MR. WISEMAN:
 24 A. Well, first and foremost, it would have to be
 25 a significant event, significant issue, that

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1 would have implications for a large number of
 2 people. If I had some concern about the way
 3 in which the issue was being managed, if I had
 4 some concern about the pace in which it was
 5 being dealt with in terms of the sense of
 6 urgency that was being given to the issue at
 7 hand, those types of things would have some
 8 influence with my thinking.

9 CHAYTOR, Q.C.:

10 Q. The fact that Eastern Health provides tertiary
 11 care, does that make any difference in terms
 12 of the relationship between the Department and
 13 Eastern Health as opposed to the other
 14 Authorities?

15 MR. WISEMAN:

16 A. A tertiary program because they are provincial
 17 programs, it means that the Department may
 18 have more frequent contact with Eastern Health
 19 on issues that are provincial, whereas that
 20 same kind of frequency and those types of
 21 issues may not occur with the other three
 22 Authorities.

23 CHAYTOR, Q.C.:

24 Q. And the fact that it's tertiary care, would
 25 the Department be involved in setting

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1 standards for tertiary care?

2 MR. WISEMAN:

3 A. Not so much the standards issue around the
 4 delivery of those are the quality of care
 5 being provided, you know, the clinicians
 6 within those program areas whether it -- for
 7 example, if it's a cardiology program, the
 8 people involved in that program would be
 9 involved in developing the standards for that
 10 care, and the standards of care would be using
 11 current best practices, and the Department
 12 wouldn't be involved with those standards. If
 13 there are some of those standards that need to
 14 be -- you know, as a part of the extension of
 15 the treatment of a patient where the patient
 16 may be returning to their home region for
 17 rehabilitation or some kind of continued
 18 treatment, if there's some protocols that need
 19 to be in place to ensure that that standard of
 20 care continues, the relationship between
 21 Eastern Health and the provision of those
 22 tertiary services and the other three
 23 Authorities, that would happen between the two
 24 Authorities involved.

25 CHAYTOR, Q.C.:

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1 Q. You indicated that there are conference calls
 2 now being held amongst the Authorities
 3 involving the Authorities. Is that something
 4 new, the frequency of that?

5 MR. WISEMAN:

6 A. It's not something that just started since
 7 I've become Minister. It's something that
 8 started in recent years, and the -- I suspect
 9 that that grew out of the fact that now we
 10 have, you know, four Authorities versus the
 11 larger number that historically existed and
 12 it's a smaller number and easy to be able to
 13 facilitate that frequent conversations between
 14 the Deputy and the CEO's.

15 CHAYTOR, Q.C.:

16 Q. To your knowledge, is it something that arose
 17 out of the ER/PR issue?

18 MR. WISEMAN:

19 A. No.

20 CHAYTOR, Q.C.:

21 Q. It predates that?

22 MR. WISEMAN:

23 A. It predates that, yes.

24 CHAYTOR, Q.C.:

25 Q. Before I leave this document, 0288, you

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1 indicated one of the concerns that Ms. Dawe
 2 raised with you surrounded your public
 3 comments that might undermine something they
 4 are trying to do. What specifically was that
 5 in reference to?

6 MR. WISEMAN:

7 A. There was one occasion, for example, where I
 8 was very critical of their recordkeeping I had
 9 expressed in terms of managing data. I have
 10 made comments to the effect that both in '05
 11 and in '06, December of '06, I've been on the
 12 public record as saying very clearly that in
 13 both those events there should have been a
 14 fuller disclosure, and I -- so I've made those
 15 kinds of public comments, contrary to what had
 16 actually happened, obviously.

17 CHAYTOR, Q.C.:

18 Q. And was Ms. Dawe, on behalf of Eastern Health,
 19 taking exception with that?

20 MR. WISEMAN:

21 A. No, no, it wasn't -- you know, the nature of
 22 the conversation wasn't argumentative. The
 23 nature of the conversation wasn't expressing
 24 strong disappointment, but more one of -- you
 25 know, I had become the Minister last year in

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1 January, so this was the first real time that
 2 we had an opportunity in my relationship with
 3 the four Authorities to be actively engaged
 4 around an issue, so it was a kind of
 5 discussion around, I guess, kind of
 6 understanding each other. So that was the
 7 nature of the conversation.
 8 CHAYTOR, Q.C.:
 9 Q. And how was it seen that you speaking out on
 10 criticisms regarding recordkeeping or what you
 11 perceived to be a lack of disclosure, how
 12 could that undermine what Eastern Health was
 13 trying to do? What was it they were trying to
 14 do that she was expressing the opinion that it
 15 could undermine their work?
 16 MR. WISEMAN:
 17 A. And I didn't -- you may want to ask Ms. Dawe
 18 because I really didn't explore that with her.
 19 I heard her question -- I heard her comment,
 20 and we engaged in a conversation, but I didn't
 21 try to better understand her perspective. We
 22 just talked in generalities around what my
 23 views were on certain issues, and talked a
 24 little bit about my approach as the Minister.
 25 CHAYTOR, Q.C.:

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1 Q. Yes, unfortunately she's been here and gone,
 2 and that issue didn't come out in terms of her
 3 expressing to you that your comments might
 4 undermine, so that's why I thought I'd explore
 5 it further with you since it's what you're
 6 telling us.
 7 MR. WISEMAN:
 8 A. Sure, and I -- I didn't -- like I say, trying
 9 to get an appreciation for why she would want
 10 to have that conversation, I didn't get into
 11 that kind of exploration. I accepted the
 12 comment on its face and provided some of my
 13 own commentary with respect to my perspective
 14 rather than trying to debate with her any
 15 views that the Board may have.
 16 CHAYTOR, Q.C.:
 17 Q. So this reference in P-0288 to concerns
 18 regarding the organization's relationship, I
 19 think we can understand that, and the lack of
 20 partnership with Government, what you
 21 understood that to be was those public
 22 comments that you had made, and the fact of
 23 the Department becoming more actively engaged
 24 and seeking clarity around everybody's role?
 25 MR. WISEMAN:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. That's what you understood this lack of
 4 partnership comment is about?
 5 MR. WISEMAN:
 6 A. Exactly, yes.
 7 CHAYTOR, Q.C.:
 8 Q. If we could have 0289, please, and again this
 9 is an excerpt from the meeting of Executive
 10 Management of Eastern Health, July 11th, 2007,
 11 and the first page shows the people who are in
 12 attendance, and then on the second page under
 13 Item 3.2.1, the heading is "Executive meeting
 14 with Board of Trustees", and the Board Chair
 15 offered the Executive -- I note that this has
 16 second draft revised through it, this is the
 17 draft that we were provided with, "Board Chair
 18 offered the Executive to meeting with the
 19 Board to voice their concerns directly to the
 20 Board. The Executive declined the offer.
 21 Direction for Louise Jones from Executive
 22 collectively is to continue as past practice,
 23 and the CEO will be the conduit with the
 24 Board. Louise Jones will express these
 25 concerns to the Board Chair on behalf of the

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1 Executive", and then the next paragraph, "On a
 2 related note, Louise Jones advised that she
 3 will be meeting with Deputy Minister, Robert
 4 Thompson, on Thursday, 19th of July, 2007.
 5 Executive has requested for forward to Louise
 6 Jones, issue for discussion. Among the issues
 7 that will be raised are: lack of partnership
 8 with Government, judicial inquiry PR/ER", and
 9 there are three other issues there which don't
 10 appear to pertain to this. So again I take it
 11 -- the lack of partnership, we've already
 12 explored. First of all, did you attend the
 13 meeting as well on July 19th, 2007?
 14 MR. WISEMAN:
 15 A. With the Executive Management of the Board?
 16 CHAYTOR, Q.C.:
 17 Q. This appears to be that Louise Jones will be
 18 meeting with Mr. Thompson on that date.
 19 MR. WISEMAN:
 20 A. No, no, no, I --
 21 CHAYTOR, Q.C.:
 22 Q. You didn't attend that. Did Mr. Thompson
 23 report back to you as to the outcome of the
 24 meeting?
 25 MR. WISEMAN:

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1 A. It wouldn't be -- the relationship between the
 2 CEO and the Deputy, as I was describing a
 3 moment ago, there's frequent exchanges back
 4 and forth. Each and every time that happens,
 5 I may or may not be aware that the Deputy has
 6 had such a meeting. If there was an issue
 7 came out of the meeting that, you know, was
 8 important for the Deputy to bring to my
 9 attention, then he would have used his
 10 discretion in letting me know that he had a
 11 meeting with the CEO and this issue came up
 12 that he thought was significant enough for me
 13 to know, but other than that, I wouldn't
 14 automatically get an update each and every
 15 time that he would have had such a meeting.
 16 Mr. Thompson and I did have a -- I don't know
 17 the exact, it may have been in and around this
 18 time here, a discussion around that
 19 relationship issue and some concerns about how
 20 -- you know, Eastern Health would have had
 21 around that point, but they were consistent
 22 with what I was sharing with you a moment ago
 23 that came from Ms. Dawe -
 24 CHAYTOR, Q.C.:
 25 Q. So it was nothing different than what had been

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1 expressed to you by Ms. Dawe?
 2 MR. WISEMAN:
 3 A. No, and at an operational level, I mean, as we
 4 dealt with ER/PR file and as we dealt with the
 5 Burin radiology file, officials in the
 6 Department of Health and Community Services
 7 were very much working, you know, with the
 8 officials in Eastern and, you know, making
 9 frequent contact about the status and wanting
 10 to know how things were moving forward. And
 11 in some cases, you know, providing some
 12 suggestion as to how things might be done
 13 different or something. So the experience in
 14 this period from May up through and including
 15 dealing with the Burin radiology file, you
 16 know, the Eastern Health and the Department of
 17 Health and Community Services would have had
 18 much more intense and frequent conversations
 19 between officials at both levels working on
 20 what ordinarily would be an operational issue.
 21 CHAYTOR, Q.C.:
 22 Q. So coming out of this meeting on July 19th,
 23 2007, which we assume went ahead, do you
 24 recall any issue of significance being brought
 25 to your attention by Mr. Thompson regarding

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1 the ER/PR issue?
 2 MR. WISEMAN:
 3 A. No, there might have been a--over the course
 4 of the summer Mr. Thompson and I would have
 5 had a number of discussions, but I, you know,
 6 and we've had discussions around the ER/PR
 7 issue. I was aware of the relationship piece
 8 that had been raised with him, but whether it
 9 grew out of this meeting or some other
 10 conversation that he would have had with
 11 Louise Jones at the time, you know, I'm not
 12 sure which.
 13 CHAYTOR, Q.C.:
 14 Q. 290 please? And again it's an excerpt from
 15 the meeting of Executive Management Minutes,
 16 Louise Jones in the interim president and CEO
 17 and a number of other people in attendance.
 18 And on page two of the exhibit, there's
 19 reference to CEOs meeting with Deputy
 20 Minister, July 19th, 2007. So I take it the
 21 meeting did go ahead and this is Louise Jones
 22 now reporting on her meeting with Mr.
 23 Thompson. And the first bullet is, "There was
 24 discussion on the rules of engagement and an
 25 understanding of each other's roles and the

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1 need to keep the Minister informed." Do you
 2 know what that's all about?
 3 MR. WISEMAN:
 4 A. Certain rules--the reference to rules of
 5 engagement, that term has come up in
 6 conversations that I've had with the Deputy,
 7 it actually came up in a conversation that I
 8 had with Ms. Dawe at one time too, I don't
 9 know when it was. But this, I suppose from
 10 the Board's perspective, you know, the events
 11 of last eight or nine months have seen the
 12 Board and the department more actively engaged
 13 with the authorities on these two files than
 14 it historically had in its relationship. And
 15 I guess when the Board has its own legislation
 16 and its own--and through the legislation is
 17 given some autonomy and historically in the
 18 Province, you know, the boards have had a high
 19 degree of autonomy in running their affairs
 20 and so any time that there's been some sense
 21 that that's about to change, then obviously
 22 the boards want to better understand it. And
 23 one of the things that, for example, I've
 24 asked, as a Minister, to have a closer working
 25 relationship between the Directors of

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1 Communications with the four authorities and
 2 the Director of Communication in our
 3 department, so that, you know, as the Board is
 4 disseminating information through their
 5 Communications people, then that information
 6 gets shared, not for approval or not for
 7 signing off or not for editing purposes, but
 8 to, you know, advise our Communication people
 9 of the Communications that are going out of
 10 each of the authorities so--and the same thing
 11 would happen, information coming out of the
 12 department needs to be communicated through
 13 the Communications people themselves, so that
 14 connection needs to--I believe that needs to
 15 have been strengthened. As an example, you
 16 know, the issues that are of a greater
 17 significance to the public need to be--Boards
 18 need to provide that information to the
 19 Minister's office as a part of an update
 20 through the Deputy and we had an example in
 21 Central Newfoundland last year there was an
 22 issue that needed to be dealt with out there,
 23 and the authority when they became aware of
 24 it, you know, one of the first things they did
 25 was, as they started to manage the process,

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1 was to advise the department that it was
 2 happening and how they were dealing with it
 3 and it just provided a closer connection with
 4 the department so we understood the issues
 5 that they were dealing with, and understood
 6 that this was an issue of public interest to
 7 the people of Central Newfoundland. And I
 8 feel in those kind of circumstances, there's
 9 an obligation for the Board to ensure that we,
 10 as a department, know that and I, as a
 11 Minister, become aware of that. And so it's
 12 a--which, you know, in as much as,
 13 historically that may have happened naturally,
 14 but now it's occurring because I'm asking for
 15 it to occur and so, therefore, there may be,
 16 you know, for some who had been involved in,
 17 as a trustee for awhile, may be witnessing a
 18 slight change in how a Minister is wanting to
 19 have that closer connection, wanting to have
 20 that more frequent flow of information on
 21 critical issues.
 22 CHAYTOR, Q.C.:
 23 Q. And so Robert Thompson would have brought that
 24 issue forward on your behalf to Ms. Jones in
 25 this meeting on July 19th, by according to

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1 what's here?
 2 MR. WISEMAN:
 3 A. Yes, yes.
 4 CHAYTOR, Q.C.:
 5 Q. It appears to be so. So I just want to
 6 understand then, you're looking for more
 7 formal processes to be put in place to ensure
 8 that in fact, you, as Minister of Health, are
 9 kept informed on those key issues?
 10 MR. WISEMAN:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Yes. And have those processes been put in
 14 place?
 15 MR. WISEMAN:
 16 A. I think one of the things that--when you say
 17 "formal process" I think the illustration I
 18 used was the Central Newfoundland example
 19 which happened after the ER/PR issue last year
 20 and it happened after the Burin radiology
 21 issue, as an example of where, you know, the
 22 authorities are now, have changed their past
 23 practice and have moved into that kind of a
 24 mode, because I wouldn't use the word
 25 "formalize" it, but articulated it and has

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1 created an understanding that that's the
 2 expectation.
 3 CHAYTOR, Q.C.:
 4 Q. So your expectation is that regardless if the
 5 handling of an issue is happening on an
 6 operational basis, you expect to be kept fully
 7 apprised of that issue and how it's unfolding
 8 and how it's being resolved?
 9 MR. WISEMAN:
 10 A. If it has a, you know, if it's a significant
 11 issue for that region, has a broad public
 12 implication and it's important that I, yes, be
 13 kept in the loop.
 14 CHAYTOR, Q.C.:
 15 Q. Such as the ER/PR issue?
 16 MR. WISEMAN:
 17 A. Yes, exactly.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and then the next paragraph on 219,
 20 Louise Jones went on to explain "that the day-
 21 to-day communication of the organization"--
 22 perhaps I should go back to the sentence right
 23 after the one that I read previously. It
 24 says, "However, there must be processes
 25 established whereby information is requested

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1 through the executive level within the
 2 organization and directed back through the
 3 Department of Health and Community Services."
 4 And I believe, Mr. Wiseman, that's what we
 5 just discussed.
 6 MR. WISEMAN:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Louise Jones went on to explain "that the day-
 10 to-day communication of the organization is
 11 carried out between the CEO with Deputy
 12 Minister and the Board Chair links directly
 13 with the Minister." So I take it that's not a
 14 change, that's what has--that's been the
 15 practice historically.
 16 MR. WISEMAN:
 17 A. Normal practice, yes.
 18 CHAYTOR, Q.C.:
 19 Q. Yes. "The organization must also strengthen
 20 its communication processes by ensuring that a
 21 Vice-President of Chief Operating Officer
 22 signs off on document that is forwarded to the
 23 Department of Health and Community Services.
 24 A formal policy will be developed in this
 25 regard and will need to be reinforced at the

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1 Director level." Is that something that you
 2 or your department requested?
 3 MR. WISEMAN:
 4 A. No, it's something--this was being held, the
 5 Eastern Health within their own organization
 6 would want to organize themselves so that
 7 information is flowing into the department,
 8 they have some ability at their senior level
 9 to ensure that it's accurate and there's an
 10 awareness at the senior level that the
 11 information is flowing.
 12 CHAYTOR, Q.C.:
 13 Q. It's really quite similar to what the
 14 government has seen fit to do on its briefing
 15 notes?
 16 MR. WISEMAN:
 17 A. Similar, yes.
 18 CHAYTOR, Q.C.:
 19 Q. And so, but this idea didn't come from the
 20 department?
 21 MR. WISEMAN:
 22 A. No, well it didn't come from me, it may have
 23 come out of the conversation with the Deputy
 24 and CEO, I really don't know, but it wouldn't
 25 have come from me, personally.

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1 CHAYTOR, Q.C.:
 2 Q. And the idea then of someone senior in the
 3 organization, a Vice-President or a Chief
 4 Operating Officer signing off on a document
 5 before it goes to the department, is that now
 6 in effect?
 7 MR. WISEMAN:
 8 A. Within their organization?
 9 CHAYTOR, Q.C.:
 10 Q. Yes, in what you are seeing come to your
 11 department from Eastern Health, are you seeing
 12 the document signed off by a COO, the CEO or a
 13 VP?
 14 MR. WISEMAN:
 15 A. I really don't know, primarily because if
 16 there's information flowing into the
 17 department from Eastern, the information would
 18 come to my attention would be communication,
 19 correspondence addressed to me from Eastern
 20 and generally those things would be signed by
 21 the Board Chair. If there's an exchange of
 22 information going from operational people
 23 within Eastern Health into the Board Service's
 24 Division of the Department of Health and
 25 Community Services and that exchange would

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1 occur frequently, that wouldn't come across my
 2 desk anyway, so I wouldn't really know that.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, so for example, if the practice is
 5 continuing that information would be provided
 6 from Eastern Health to the department with the
 7 view that it ultimately ends up in your
 8 briefing note, you wouldn't see whether or
 9 that that information has been signed off by
 10 anyone from Eastern Health?
 11 MR. WISEMAN:
 12 A. No.
 13 CHAYTOR, Q.C.:
 14 Q. By the time it gets to your briefing note,
 15 there's no indication in the briefing note as
 16 to the source of the documentation or who
 17 signed off on it?
 18 MR. WISEMAN:
 19 A. No, it's not.
 20 CHAYTOR, Q.C.:
 21 Q. And that's not a practice right now in the
 22 department to actually have it in the document
 23 that does land on your desk to say who brought
 24 this information forward, who signed off on
 25 it?

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1 MR. WISEMAN:
 2 A. No.
 3 CHAYTOR, Q.C.:
 4 Q. Continue on with the next bullet, "There was
 5 brief discussion on the Transparency and
 6 Accountability Act and the Minister's
 7 accountability to the public for the health
 8 system, with a recognition that sometime there
 9 is, will be crossover." It appears then that
 10 there was some discussion between Ms. Jones
 11 and Mr. Thompson on the Transparency and
 12 Accountability Act and your accountability to
 13 the public. Was that discussion--did that
 14 discussion take place at your request and/or
 15 do you know what that discussion was about,
 16 why that would have been an issue to be
 17 discussed at this point in time?
 18 MR. WISEMAN:
 19 A. I suspect it would have come about as a result
 20 of, I've made comments to the Board Chairs and
 21 the CEOs and I've made comments in the
 22 department as well, so that, you know,
 23 frequently as a Minister and we discussed this
 24 last week when we talked about question
 25 period, you know, frequently as a Minister,

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1 you'll get asked questions--if the House of
 2 Assembly is opened, you'll get asked questions
 3 in the House. If the House is not opened or
 4 when the House is opened, at any given issue
 5 that arises that involves the Health and
 6 Community Service's system, you know, I may be
 7 asked in the public domain by, you know, a
 8 news reporter, others around that are doing a,
 9 they have an interest in a particular issue,
 10 around issues with respect to the delivery of
 11 a program of service that may be happening in
 12 the West Coast or Central or anywhere else in
 13 the Province. And as a Minister, I may make
 14 frequent comment around what might be
 15 happening in a particular region or
 16 jurisdiction or with respect to a particular
 17 program or service. And it's important that,
 18 if I'm doing that, I'm not doing that to
 19 undermine what the authorities'
 20 responsibilities are in delivering those
 21 programs, but purely, you know, as a Minister
 22 that I will find myself periodically being
 23 asked those questions and I'll provide public
 24 comment with respect to them. On occasion as
 25 well, the Regional Health Authorities

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1 themselves will make public comment around
 2 programs and services that they provide,
 3 either in response to requests or as a part of
 4 an ongoing update to the population that they
 5 serve. So the point, I guess, that I've been
 6 making in these discussions is that, you know,
 7 when, if I'm in that mode of doing that, then
 8 it's important that I be provided with good
 9 accurate information from the authorities, so
 10 there's a good information flow, and that
 11 sometimes if they're making a comment about an
 12 issue, I may find myself in that same position
 13 where I, too, am making comments. So on
 14 occasion, on issues with respect to things,
 15 particularly those things that have a lot of
 16 public interest, we may find ourselves, both
 17 as an authority and myself, as a Minister,
 18 making public comment on the same issue. And
 19 there's nothing wrong with that, my doing it
 20 does not intend to undermine the authority,
 21 but purely in my role and as a Minister, I may
 22 make public comment on things that are of
 23 public interest with respect to Health and
 24 Community Services.
 25 CHAYTOR, Q.C.:

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1 Q. And has Eastern Health expressed concern to
 2 you that they see there being some crossing of
 3 the line when you speak on a given issue?
 4 MR. WISEMAN:
 5 A. No, I guess there was some questions raised
 6 about how we might do that so that we, you
 7 know, that we're not necessarily contradicting
 8 each other and my comment clearly is that, you
 9 know, it's not an issue of contradiction, it's
 10 an issue of as we may both have our separate
 11 roles, so I will always, as a Minister, make
 12 public comment on issues that are public
 13 interest and as I do to help inform my
 14 commentary, I want to make sure that if they
 15 have the information, then, you know, I am
 16 obviously able to ensure that what I'm getting
 17 is accurate, valid and that I will always be
 18 in a position where I may be making public
 19 comment about those issues.
 20 CHAYTOR, Q.C.:
 21 Q. Yes, and so perhaps that's what is indicated
 22 here, with a recognition that sometimes there
 23 will be crossover?
 24 MR. WISEMAN:
 25 A. Yes.

1 CHAYTOR, Q.C.:

2 Q. And, of course, we'll also raise the question
3 with Ms. Jones when she's here.

4 MR. WISEMAN:

5 A. Yes.

6 CHAYTOR, Q.C.:

7 Q. Yes, okay. So it's just around, I take it,
8 the discussion is around trying to be clear on
9 roles, although sometimes the lines aren't
10 clearly defined, is that fair?

11 MR. WISEMAN:

12 A. And that's a fair point and you're right and
13 to be frank, I'm not sure that it will ever
14 be, you know, abundantly clear because the
15 public expectation will be that, as a
16 Minister, that you will be in a position to
17 make public comment and the expectation that
18 if asked, that you would make public comment.
19 And that you would be in a position to do that
20 and the expectation is that you would and I
21 will.

22 CHAYTOR, Q.C.:

23 Q. Yes, okay, thank you. Unless there are other
24 meetings that you can recall with the other
25 Health Care Authorities around this issue,

1 CHAYTOR, Q.C.:

2 Q. Okay, I'm just wondering in terms of any notes
3 of any meetings around the ER/PR issue, so I
4 take it, it would either be your Deputy
5 Minister or your EA or both?

6 MR. WISEMAN:

7 A. Most of the conversations that anything that
8 would have come out of those discussions
9 around ER/PR would have involved the Deputy,
10 Moira Hennessey or the Directors of
11 Communication.

12 CHAYTOR, Q.C.:

13 Q. And you would expect any or all of them to
14 have notes on the meetings that you attended
15 regarding the issue?

16 MR. WISEMAN:

17 A. Very likely they would have notes and comments
18 about those meetings.

19 CHAYTOR, Q.C.:

20 Q. Okay, thank you.

21 CHAYTOR, Q.C.:

22 Q. Have you ever discussed the ER/PR issue with
23 Peter Dawe, the Executive Director of the
24 Canadian Cancer Society of Newfoundland and
25 Labrador branch?

1 other meetings or discussions, I plan to leave
2 that issue now in terms of discussions with
3 the other Boards, so there's nothing else you
4 can think of in terms of any meetings or
5 discussions you've had with the Health
6 Authorities around this issue?

7 MR. WISEMAN:

8 A. Other than those that I've already referenced
9 with respect to, you know, the meetings with
10 the Board Chairs and CEOs that have happened
11 periodically since I've become Minister and
12 there's been a couple since this issue arose
13 last year, in May, and so we've, you know,
14 other than those which we've already
15 referenced.

16 CHAYTOR, Q.C.:

17 Q. Yes, okay. And who, again, is your EA?

18 MR. WISEMAN:

19 A. Sharon Vokey.

20 CHAYTOR, Q.C.:

21 Q. Sharon Vokey. I don't know if I asked you
22 that before. And would she take notes for you
23 at those meetings?

24 MR. WISEMAN:

25 A. She may not always attend.

1 MR. WISEMAN:

2 A. I may have, I don't recall any specific
3 meeting that we would have had. I've had,
4 over the course of the last, well since
5 becoming Minister, I've had several
6 discussions with Peter, in the role, what they
7 do, we've had some discussions around, for
8 example, very recent conversation we would
9 have had centred around the cancer strategy
10 for the Province, you know, we've cross paths
11 at some functions very recently at Daffodil
12 Place and we had an exchange like that, but I
13 don't recall having a dedicated meeting where
14 we discussed ER/PR.

15 CHAYTOR, Q.C.:

16 Q. And I take it you never sought a meeting with
17 him on the issue?

18 MR. WISEMAN:

19 A. I don't recall having a dedicated meeting on
20 the, we may have had a meeting where the issue
21 of ER/PR became a part of the conversation,
22 but I don't recall it.

23 CHAYTOR, Q.C.:

24 Q. And the recent discussions around the cancer
25 strategy and meetings regarding Daffodil Place

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1 or meeting him at any function for Daffodil
 2 Place, I take it that's all since you're
 3 Minister of Health?
 4 MR. WISEMAN:
 5 A. Yes, now there was, in my capacity as
 6 Parliamentary Secretary, I recall having a
 7 couple of meetings with Peter and the
 8 President of this Society on behalf of, I'm
 9 not sure if it was, I think it was former
 10 Minister Ottenheimer, that would have happened
 11 on a couple of occasions, if I'm not mistaken.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and would the issue, though, of ER/PR
 14 have been raised?
 15 MR. WISEMAN:
 16 A. No--well, I'm just trying to recall when I
 17 would have had these meetings because I -
 18 CHAYTOR, Q.C.:
 19 Q. I understood you had no dealings with the
 20 ER/PR issue when you were Parliamentary
 21 Secretary?
 22 MR. WISEMAN:
 23 A. No, that's why I'm saying--unless it would
 24 have--in the context of it was in the public
 25 domain and started in the fall of 2005. If I

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1 had a meeting with him, if it came up as a
 2 comment that he may have made, I wouldn't have
 3 engaged in a conversation with him because I
 4 wouldn't have had kind of an awareness to be
 5 able to engage in any kind of conversation
 6 with respect to it.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, so I just want to understand what you're
 9 saying. So while you were Parliamentary
 10 Secretary, you did have a couple of meetings
 11 with Peter Dawe?
 12 MR. WISEMAN:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. And those would have been on other issues?
 16 MR. WISEMAN:
 17 A. They would have been on, you know, for
 18 example, we talked about the ban on the
 19 smoking in bars and bingo halls. We talked
 20 about, you know, the smoke free campaigns.
 21 It's been around those kinds of things, as an
 22 example. There may have been other meetings
 23 that I had that, on behalf of the Minister,
 24 that, you know, other initiatives might have
 25 been a part of the agenda and the reason for

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1 them coming in. I recall having a couple of
 2 conversations with--when Dr. West was their
 3 President and him and Peter met with me, but I
 4 think it was in my capacity as Parliamentary
 5 Secretary, then acting on behalf of the
 6 Minister.
 7 CHAYTOR, Q.C.:
 8 Q. So nothing to do with the ER/PR issue?
 9 MR. WISEMAN:
 10 A. Not that I can recall, no.
 11 CHAYTOR, Q.C.:
 12 Q. And did you, do you think that would have
 13 happened given that you indicated that you
 14 didn't have involvement in the ER/PR issue?
 15 MR. WISEMAN:
 16 A. No, I mean, that doesn't--it don't sound like
 17 it would have been reasonable for me to have
 18 had a conversation with him about ER/PR and it
 19 may have been--because if it was an issue in
 20 the public domain at that time, you know,
 21 Peter may have made some comment about it or
 22 there may have been some kind of reference to
 23 it, but we wouldn't have engaged in an
 24 exchange in and around it.
 25 CHAYTOR, Q.C.:

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1 Q. And would you have initiated any contact with
 2 Peter Dawe around the issue or around Peter
 3 Dawe's communications on the issue?
 4 MR. WISEMAN:
 5 A. Not that I can recall.
 6 CHAYTOR, Q.C.:
 7 Q. And is that something you think you would
 8 recall?
 9 MR. WISEMAN:
 10 A. Not necessarily, no.
 11 CHAYTOR, Q.C.:
 12 Q. And if you weren't involved, yourself, in the
 13 ER/PR issue, would you expect that you would
 14 have initiated contact on the issue or on
 15 Peter Dawe's communications around the issue?
 16 MR. WISEMAN:
 17 A. I mean, there may have been, the issue around
 18 Peter's--public comments Peter may have made
 19 on some issues, you know, Peter and I have had
 20 a couple of conversations around some public
 21 comments he would have made that the
 22 department may have had some, you know,
 23 different views on, but in terms of
 24 government's action or lack of action on some
 25 front, that Peter and I have had a couple of

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1 conversations around those sorts of things.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, so tell me what that's about? So Mr.
 4 Dawe is making public comments and the
 5 department has a different view and -
 6 MR. WISEMAN:
 7 A. He may have made some comments around the, you
 8 know, government's lack of action on a
 9 particular front and that I would have had a
 10 conversation with him about, you know, what
 11 government has actually done on some areas
 12 with respect to cancer treatment or cancer
 13 care. And there's been a couple of occasions
 14 that I've had those kind of conversations with
 15 Peter, but--and they would have, over the
 16 course of the last, since 2003, I guess, when
 17 we formed government, a couple of discussions
 18 on behalf of Ministers I've had with Peter and
 19 a couple of conversations I've had with him
 20 since becoming Minister as a part of our, you
 21 know, relationship that we had as a
 22 government, I had as a Minister, with a
 23 variety of organization who either--
 24 representing special interest groups or
 25 advocate on behalf of an issue and or an

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1 organization we would provide some funding
 2 support for it to deliver programs and
 3 services. So, you know, the Cancer Society,
 4 Arthritic Society, there's a variety of
 5 organization, Diabetic Society, we'd have a
 6 number of organizations that we have
 7 relationships with, and so I'd have periodic
 8 conversations with, sometimes in formal
 9 meetings, sometimes in casual meetings that we
 10 may run into each other some place, or we may
 11 have a telephone exchange and, but they would
 12 be, you know, varied and the Cancer Society
 13 would be one of those.
 14 CHAYTOR, Q.C.:
 15 Q. And in terms of the public comments that Mr.
 16 Dawe may have made, as you say may have made
 17 and that the department may have taken a
 18 different view on, and the occasions in which
 19 you spoke to him on that, did those occasions--
 20 did that have anything to do with the ER/PR
 21 issue and what Mr. Dawe was saying about the
 22 ER/PR issue?
 23 MR. WISEMAN:
 24 A. I can't recall. It may quite very well--in
 25 fact, just to illustrate my point, I remember,

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1 you know, the Cancer Society having a meeting
 2 in my home town a while back and in my
 3 introduction--Peter, as he was introducing me,
 4 acknowledged that on occasion we do agree to
 5 disagree and at times we will have different
 6 views on things, but we have a good working
 7 relationship, so he, in jest, and in making a
 8 casual comment and a joking comment, in my
 9 introduction that day made that observation,
 10 so I think it reflects, you know, the
 11 relationship that, a good working relationship
 12 that I think we have with the Society and the
 13 kind of relationship that I personally would
 14 have with Peter through those kind of
 15 connections.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, if we could have P-0311, please?
 18 REGISTRAR:
 19 Q. Sorry, what was the exhibit number?
 20 CHAYTOR, Q.C.:
 21 Q. 311. Mr. Wiseman, this is an e-mail from
 22 Darrell Hynes to yourself, December 6th, 2005
 23 at 11:10 a.m., and he's forwarding, Cancer
 24 Society says "Wait for results could have been
 25 shorter. It's been several months since"--and

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1 then it goes on. And he's saying, "FYI
 2 transcript" and at this point in time, Darrell
 3 Hynes is the Executive Assistant of the
 4 Honourable John Ottenheimer. And Mr. Hynes is
 5 forwarding to you a transcript of an article
 6 and we'll see it here if we scroll down a bit.
 7 And it's an interview of Mr. Dawe by Jeff
 8 Gilhooly. Now first of all, you would have
 9 been Parliamentary Secretary in the Department
 10 of Health and Community Services at this point
 11 in time?
 12 MR. WISEMAN:
 13 A. I would have been, yes.
 14 CHAYTOR, Q.C.:
 15 Q. And you would not have been, you told us,
 16 involved in the ER/PR issue?
 17 MR. WISEMAN:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. Why would Mr. Hynes be sending this to you or
 21 forwarding this transcript of this interview
 22 to you?
 23 MR. WISEMAN:
 24 A. I don't know.
 25 CHAYTOR, Q.C.:

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1 Q. Do you have any recollection of this?
 2 MR. WISEMAN:
 3 A. Of this e-mail?
 4 CHAYTOR, Q.C.:
 5 Q. Yes, of being forwarded this.
 6 MR. WISEMAN:
 7 A. No, no.
 8 CHAYTOR, Q.C.:
 9 Q. And if we look down through the interview
 10 that's being forwarded to you, it's clearly
 11 about the ER/PR issue?
 12 MR. WISEMAN:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. And Jeff Gilhooly is indicating--and the
 16 interview took place Monday, December 5th,
 17 2005, so the day before the transcript is sent
 18 to you. And Mr. Gilhooly says "It's been
 19 several months since the Eastern Health
 20 Authority discovered a test done on some
 21 breast cancer patients in this province had
 22 been producing false results." And it goes on
 23 from there and Mr. Dawe is being interviewed
 24 saying, "There's about 350 patients a year who
 25 get tested for breast cancer in this province

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1 and when you have breast cancer, they have to
 2 determine if you're ER/PR positive." And he
 3 goes on from there about Tamoxifen and he
 4 indicates in the middle of the page "Part of
 5 the problem with the story, I think, is that
 6 it's a little bit complex. Just to be clear,
 7 you know, we're the Canadian Cancer Society,
 8 we're not Eastern Health and we're there as
 9 advocates saying, you know, this should be
 10 quicker, but you know, when Eastern Health
 11 looked at it, they looked at it this summer,
 12 they found out they had a problem, I'm sure
 13 they thought within a couple of months they'd
 14 have all these tests back, results back and
 15 anybody who could have been on Tamoxifen would
 16 have been given the opportunity. The problem
 17 that they run into is that, and in hindsight,
 18 you know, maybe they should have seen it,
 19 maybe they could have done something a little
 20 bit differently, but the problem is, they're
 21 still only about halfway through, so they had
 22 seven or eight, around 700 altogether that had
 23 to retest and they're only halfway through",
 24 he's indicating and Jeff Gilhooly says, "All
 25 right, does that speak to another problem with

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1 the fact that when these, I guess, whole
 2 batches of tests went up to Toronto, they
 3 weren't prioritized?" "Well, you know, and
 4 we've dug through this"--Peter Dawe says--"and
 5 spoken to the people at Eastern Health to
 6 figure out what was going on. Indeed when
 7 they figured out they had a problem, they
 8 batched all the samples together and believe
 9 it or not, Eastern Health, you know, they
 10 still got samples of tumors going back to
 11 1997" and he goes on about what Eastern Health
 12 has done. And he makes a point here, "I think
 13 they didn't know the extent of the problem
 14 that they had then and in hindsight if you
 15 look back at it, you know, there could have
 16 been a prioritization process put in place
 17 where, you know, maybe your most recent
 18 diagnosis would have been tested first or as
 19 it turns out, I mean, there's even people that
 20 were sent up--or samples that were sent up for
 21 people who were deceased because it was so
 22 long ago." And so he's talking about
 23 prioritization, I guess, of the test results.
 24 And he goes on to say about the contact with
 25 the patients, "If you send all the samples

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1 back and you're not sure, if you know there
 2 was no contact made with any of these people
 3 prior to the samples going back up, and again
 4 in hindsight the Cancer Society would have
 5 said, well gee whiz, guys, if you got a
 6 problem of this magnitude and it's affecting
 7 people this way, the first step you should do
 8 is to, you know, contact all these people and
 9 have a direct communication about what the
 10 issue is. And then Peter Dawe says, "Well I
 11 think they're trying to fix the problem now,
 12 but certainly the original plan was not to
 13 contact the people"--and he's talking about
 14 the contact of the people and there's some
 15 indication from Jeff Gilhooly, "Well maybe if
 16 you spent more time at beginning sorting
 17 through the results"--and he talks about the
 18 fact that Peter Dawe says, "We've been in
 19 contact with a number of people, who, you
 20 know, first when the story broke and it came
 21 out in the media, their first response was,
 22 you know, what does it mean? What does this
 23 mean? So now we're at the point, I think,
 24 where people understand what it means, but
 25 they're getting very anxious." And he goes on

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1 and he finishes with, "And so you've got a
 2 group of women now who are sitting there who
 3 can't control the process and are feeling
 4 quite helpless about it." And so that's
 5 basically, I just took you through some of the
 6 points in the interview, but it seems to be
 7 Mr. Dawe speaking out about the issue and how
 8 the retesting is going and some concerns that,
 9 in his opinion, have been identified. You
 10 don't recall this e-mail or this transcript
 11 being sent to you?
 12 MR. WISEMAN:
 13 A. No, no.
 14 CHAYTOR, Q.C.:
 15 Q. Would you likely have read it?
 16 MR. WISEMAN:
 17 A. Well may or may not have, depending how--I
 18 have no recollection of the e-mail at all, if
 19 Darrell would have sent me an e-mail and made
 20 a comment that he was sending me, as an
 21 example of something, I may or may not have
 22 read it. If, for example, if he was sending
 23 me this as an example of something where, you
 24 know, the minister of the day was--he would
 25 have been doing it on behalf of the Minister,

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1 I assume, if he was sending me something that
 2 said, you know, here's an example of where
 3 Peter Dawe has been critical of government and
 4 I may not necessarily have read it, but I
 5 don't recall the e-mail and so whether he sent
 6 it in that context of not, I really don't
 7 know.
 8 CHAYTOR, Q.C.:
 9 Q. Do you read that as being critical of
 10 government?
 11 MR. WISEMAN:
 12 A. No, it's an observation that he's making.
 13 CHAYTOR, Q.C.:
 14 Q. Did you have any follow up with Mr. Dawe
 15 following all this -
 16 MR. WISEMAN:
 17 A. I don't recall the e-mail at all, so I don't
 18 recall any follow-up that would have come from
 19 it.
 20 CHAYTOR, Q.C.:
 21 Q. So with respect, I just want to be clear here,
 22 with respect to the ER/PR issue, have you ever
 23 approached Mr. Dawe and voiced any concern to
 24 him about this public comments on this issue?
 25 MR. WISEMAN:

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1 A. To my knowledge, I may have had a conversation
 2 with Peter one time around this public
 3 confidence in our health system. I've had
 4 that conversation with numerous people and
 5 ensuring that, you know, as we try to work
 6 through, you know, a critical issue before us,
 7 as we try to ensure, make right for those
 8 people who are impacted what has happened
 9 here. In the process, you know, not to be
 10 highly critical of our health system overall
 11 or the work that's currently being done there,
 12 I may have had that kind of conversation with
 13 Peter because I've had it with many people.
 14 CHAYTOR, Q.C.:
 15 Q. But have you had it with him in terms of the
 16 ER/PR issue?
 17 MR. WISEMAN:
 18 A. In the context of the ER/PR issue, yes. I may
 19 have had that kind of conversation with Peter,
 20 because, as I said, I've had it with others,
 21 so I may have had a conversation with Peter
 22 around ensuring as we go through this process,
 23 in his role as an advocate for the people that
 24 have cancer in the province, and for dealing
 25 with cancer issues, that as we go--in his role

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1 and his capacity, I may have expressed some
 2 view that it's important that we not be highly
 3 critical of the good work that's being done
 4 now, so as to undermine what we now do in the
 5 system and quality work that we actually do.
 6 It's quite possible that I have had that
 7 conversation with Peter because I've had it
 8 with others.
 9 CHAYTOR, Q.C.:
 10 Q. And how is it that you would have perceived
 11 what Mr. Dawe was saying on the ER/PR issue
 12 could undermine things?
 13 MR. WISEMAN:
 14 A. I'm not making the connection between the two,
 15 I'm just making the observation that we need
 16 to be careful as we do--as I've said that to
 17 others, I've said it Mr. Ritter with the
 18 Medical Association, but I wasn't saying it
 19 because someone in the Medical Association was
 20 making the observation, I was just making it
 21 as a general observation to those people who
 22 are looked to as leaders in our health system
 23 on cancer related issues and others. And the
 24 Cancer Society is an organization that does a
 25 lot of good work in the province, they have a

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1 lot of contact with a lot of people and their
 2 public comments are very credible and they are
 3 taken as such. And the same thing with the
 4 Medical Association, they had that same kind
 5 of status and so, it's important, as I've said
 6 to both and to others, that, you know, as we
 7 make public comment about this, it is
 8 important that we don't undermine what it is
 9 we now do.

10 CHAYTOR, Q.C.:

11 Q. So in terms of the ER/PR issue, you can recall
 12 having discussions with Peter Dawe--not in the
 13 context of ER/PR -

14 MR. WISEMAN:

15 A. No, what I had said to you was that I may have
 16 had conversations with Peter because I've had
 17 it with many others and I used Mr. Ritter as
 18 an example with the Medical Association. So
 19 I've had many conversations with many
 20 individuals around the ER/PR issue and I would
 21 have made that observation as an observation
 22 that I would make--and I would make it again
 23 today to you or others, that, you know, as we
 24 have this discussion around and the
 25 examination of what it is happened in that

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1 period of between 1997 and 2005, as we have an
 2 examination of the disclosure issues and the
 3 communication issues. As we have that kind of
 4 public discussion, it's really important not
 5 to take away from the good work that's being
 6 done in that area of the lab now or not to
 7 take away from the good work that's being done
 8 in providing cancer care for the people of the
 9 province within our health system.

10 CHAYTOR, Q.C.:

11 Q. And in giving that message to the Cancer
 12 Society, were you trying to influence Mr.
 13 Dawe's speaking out on this issue?

14 MR. WISEMAN:

15 A. No, as I try to influence not to--not to
 16 suggest that he should or shouldn't say
 17 anything, all I would have said, as I've said
 18 to others, is the influence I'm trying to
 19 bring to bear when I make that comment to
 20 anybody is to recognize that there's some good
 21 things being done and in our role as advocates
 22 or in our role as Minister of Health Authority
 23 or anyone else in the public domain, making
 24 comments in a public way around what took
 25 place with ER/PR, let's make our comments in

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1 the context of what took place in and around
 2 the retesting process, what may have taken
 3 place with respect to disclosure and the
 4 communication piece, but let's not be critical
 5 of the good work that's being taken place as
 6 we speak. So any comment I would have made
 7 with that respect, wouldn't have been to
 8 silence anyone, it wouldn't have been to be
 9 critical of something they would have said,
 10 but purely one of a reminder that we have a
 11 responsibility, all of us as we make public
 12 comment to ensure that are objective in our
 13 views.

14 CHAYTOR, Q.C.:

15 Q. What was it, though, that Mr. Dawe was doing
 16 that was critical of any other process?

17 MR. WISEMAN:

18 A. I didn't say that I was responding to a
 19 criticism that he had made. What I'm saying
 20 to you is--and I haven't, actually, as I said
 21 to you earlier, you know, I don't recall
 22 having a direct conversation with Mr. Dawe.
 23 What I'm saying to you, I may have had one
 24 because I've had several encounters with him,
 25 but what I'm sharing with you in a generic way

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1 is a conversation that I would have had with
 2 many people and it's not targeted at Mr. Dawe,
 3 it's not targeted at the Medical Association
 4 or targeted at anyone else I would have had
 5 the conversation with, but purely -

6 CHAYTOR, Q.C.:

7 Q. And you have no recollection of it being
 8 specific to ER/PR?

9 MR. WISEMAN:

10 A. It would purely be an observation that I would
 11 have made with a variety of people and so it's
 12 not, you know, it's not specific to Mr. Dawe
 13 or to anyone else that I would have had the
 14 conversation with, because what I've just
 15 shared with you then is a comment that I made
 16 publicly and privately to many individuals.

17 CHAYTOR, Q.C.:

18 Q. Was there any concern in the department as to
 19 Mr. Dawe's public comments regarding the ER/PR
 20 issue?

21 MR. WISEMAN:

22 A. Not that I can recall, I mean Mr. Dawe has
 23 been a vocal advocate for people with cancer
 24 and he's been critical when he's felt it's
 25 been necessary to be critical of how things

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1 have been managed; he's been critical of the
 2 service level for people with cancer, and at
 3 the same time I respect the role that he has
 4 as an advocate for individuals and when we've
 5 met, you know, we've had good open discussions
 6 and I appreciate the work that they do as a
 7 society.

8 CHAYTOR, Q.C.:

9 Q. I just want to be clear, but having said that
 10 though, you have indicated to him, as you have
 11 to others such as Mr. Ritter, that take care
 12 in how your criticisms are being voiced, is
 13 that the message?

14 MR. WISEMAN:

15 A. No, no, don't misinterpret what I'm saying.

16 CHAYTOR, Q.C.:

17 Q. That's why I want to understand what you're
 18 saying.

19 MR. WISEMAN:

20 A. I want to be clear here is that I would say to
 21 you here, I said to the media in a scrum last
 22 week in dealing with, you know, in
 23 pronouncements being made about the process
 24 we're going through here, I would say to
 25 anyone, I said to them last week, you know, as

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1 we go through this process and we hear
 2 testimony, it's important that we don't jump
 3 to conclusions to assume that we know after
 4 two or three days of testimony what went wrong
 5 here and someone is to blame and start
 6 pointing figures. I said that last week to
 7 the media. I would say to you and other
 8 members of the public, I've said in casual
 9 conversation with Mr. Ritter about the
 10 medical, you know, as a system and we need to
 11 be careful about how we are commenting about
 12 ER/PR which is a very specific test that's
 13 done in one section of a lab and it's one
 14 piece of a bigger health system, and that as
 15 we may comment about what went wrong here, we
 16 need to be careful about how we actually may
 17 undermine what it is we do in our health
 18 system. We've had recently in the media, I've
 19 listened to two physicians in the province who
 20 have made public comment about their concern
 21 around, you know, the negative discussion
 22 about what happened here has now started to,
 23 you know, affect some other areas of the
 24 health system, that they're making an
 25 observation. So my comment is not any more

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1 placed or directed to one or two individuals,
 2 as was a commentary I heard in the public
 3 domain by Dr. Stone, a cardiologist, last
 4 week. It was an observation that he was
 5 making to ensure that we protect the integrity
 6 of the system that we have. And as a
 7 Minister, I believe I have a responsibility to
 8 sometimes, if necessary, to ensure that I
 9 reinforce that message, not in reaction to
 10 something that's been said, not in response to
 11 something that has been said or to be critical
 12 of something that was said, but as an
 13 observation that I would make.

14 CHAYTOR, Q.C.:

15 Q. But in reinforcing that message to someone
 16 whose job is to advocate on behalf of cancer
 17 patients in the province and if they see any
 18 criticism to be voicing that criticism, in
 19 reinforcing the message to that individual,
 20 what is your intent in doing that?

21 MR. WISEMAN:

22 A. Purely any observation I would have made and
 23 again, your questioning assumes that I--
 24 confirming that I had the conversation because
 25 I don't recall -

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1 CHAYTOR, Q.C.:

2 Q. So you have no recollection?

3 MR. WISEMAN:

4 A. I may have had, I'm not denying that I did
 5 have a conversation, what I'm saying to you is
 6 that over the course of the last eight or ten
 7 months, I've had a variety of conversations in
 8 my capacity as a Minister with a number of
 9 individuals round the ER/PR issue, many people
 10 would ask the question in a public gathering.
 11 I've been at other meetings on non-related
 12 topics and the issue has come up -

13 CHAYTOR, Q.C.:

14 Q. But I want to focus in on any discussion you
 15 had with the Cancer Society on this.

16 MR. WISEMAN:

17 A. And I'm just saying to you--but what I'm
 18 saying to you is that I don't recall having a
 19 very specific discussion with them. What I am
 20 saying to you, though, that over the course of
 21 the last number of months, if I had a
 22 conversation with Mr. Dawe, it's quite
 23 possible that I would have said that because I
 24 have said it to many others, and so in so
 25 saying it, it's not to be critical of what

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1 they said or in so saying it, I'm not saying
 2 that you should discontinue making public
 3 commentary on it, but all I'm saying is that
 4 as we make public commentary on the ER/PR
 5 issue, let's put it in some kind of a context
 6 so as not to have an unnecessary detrimental
 7 effect on our bigger health system.
 8 CHAYTOR, Q.C.:
 9 Q. This would have been back, I would--in
 10 December of '05, January 2006 time period?
 11 MR. WISEMAN:
 12 A. What would have been?
 13 CHAYTOR, Q.C.:
 14 Q. You have no recollection of having a
 15 discussion with Peter Dawe?
 16 MR. WISEMAN:
 17 A. We're going back to the e-mail. The e-mail in
 18 question here, I don't recall this e-mail.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and you have no recollection at that
 21 time period having a discussion with Mr. Dawe
 22 on the ER/PR issue or any comments Mr. Dawe
 23 may have been making in the media at that
 24 point in time?
 25 MR. WISEMAN:

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1 A. No, I don't.
 2 THE COMMISSIONER:
 3 Q. Ms. Chaytor, it's about 11:00. Is this a good
 4 place to have the morning break?
 5 CHAYTOR, Q.C.:
 6 Q. Yes, thank you.
 7 THE COMMISSIONER:
 8 Q. We'll take fifteen minutes
 9 (RECESS)
 10 THE COMMISSIONER:
 11 Q. Please be seated. Ms. Chaytor?
 12 CHAYTOR, Q.C.:
 13 Q. Thank you. Mr. Wiseman in my answer or in
 14 your answer to my question on any discussions
 15 you had with Peter Dawe, you indicated that
 16 you had discussions with Mr. Ritter. Have you
 17 had any discussions with Mr. Ritter on the
 18 ER/PR issue?
 19 MR. WISEMAN:
 20 A. Other than in that same way that I just
 21 described earlier in the context of, you know,
 22 the public debate and discussion around ER/PR
 23 and it's a, you know, some of the cautions, I
 24 suppose and implications and undermining what
 25 we're doing in our health system and as a very

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1 general kind of conversation like that.
 2 CHAYTOR, Q.C.:
 3 Q. Now, Mr. Wiseman, we know that there were two
 4 external reviews done regarding the ER/PR
 5 issue. Did you ask anyone--did you or anyone
 6 on your behalf ask to be provided with copies
 7 of those reports before they became released
 8 to the public after Judge Dymond's decision,
 9 had you at any time prior to that asked to see
 10 the reports?
 11 MR. WISEMAN:
 12 A. I hadn't, no.
 13 CHAYTOR, Q.C.:
 14 Q. So if there was a request to see those reports
 15 by the department back in August of 2007, that
 16 wasn't done at your direction?
 17 MR. WISEMAN:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. And you didn't have any knowledge that that
 21 had happened?
 22 MR. WISEMAN:
 23 A. No.
 24 CHAYTOR, Q.C.:
 25 Q. Mr. Wiseman, why didn't you ask to see the

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1 reports?
 2 MR. WISEMAN:
 3 A. Well the discussion I had had at the very
 4 beginning centered around the fact that they
 5 were done as part of a peer review process and
 6 so there was that understanding of how in fact
 7 they were done and under what conditions they
 8 were done and later on, I can't recall when,
 9 but sometime over the course of, you know,
 10 before Judge Dymond's decision, discussing the
 11 issue prior to that, I was made aware that or
 12 I was advised that there was also, you know, a
 13 formal arrangement with the people who did the
 14 review, in fact, part of the engagement there
 15 was a reference to this being done as a part
 16 of a peer review process and that that, you
 17 know, this wasn't a matter of someone saying
 18 it was a peer review, I was now getting the
 19 information that there was an actual, you
 20 know, either a letter of engagement or a
 21 letter confirming the engagement that
 22 acknowledged that this was being, a part of a
 23 process to be labelled and described as a peer
 24 review process.
 25 CHAYTOR, Q.C.:

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1 Q. Now at the time that we met for your
 2 interview, your second interview on March
 3 13th, 2008, you hadn't read the reports at
 4 that point in time?
 5 MR. WISEMAN:
 6 A. No.
 7 CHAYTOR, Q.C.:
 8 Q. And you've since reviewed the reports?
 9 MR. WISEMAN:
 10 A. Yes, I have, yes.
 11 CHAYTOR, Q.C.:
 12 Q. If we could have 0245 please? Now we know
 13 Judge Dymond's decision regarding the reports
 14 came down February 14th, 2008.
 15 MR. WISEMAN:
 16 A. Uh-hm.
 17 CHAYTOR, Q.C.:
 18 Q. This exhibit is an e-mail exchange between
 19 your Director of Communications, Glenda Power
 20 and Robert Thompson.
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. You've seen this document before, I take it?
 25 MR. WISEMAN:

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1 A. It was part of the documents that you shared
 2 with me earlier as the exhibits to be
 3 discussed.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, yes. And it's, of course, documents
 6 that we've received from your department.
 7 MR. WISEMAN:
 8 A. Uh-hm.
 9 CHAYTOR, Q.C.:
 10 Q. Through the disclosure in this process. And
 11 what appears to have been being drafted here
 12 is a press release and a revised backgrounder
 13 and a briefing back, which Glenda is
 14 forwarding to Robert to review with you and
 15 the Minister in the morning and could be the
 16 basis for a media technical briefing. So on
 17 the bottom of the page there, Minister, you'll
 18 see Glenda Power's e-mail to Robert Thompson.
 19 "Subject: for your view, February 19th, 2008,
 20 6:22 p.m. and it's Q and A's on peer review
 21 attached below." And throughout this document
 22 it still continues to refer to the reports as
 23 peer reviews and it's question and answers,
 24 release of ER/PR review documents. So this is
 25 just a few days after the decision has come

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1 down. What was the purpose of this document,
 2 these Q and A's around the release of the
 3 external reports?
 4 MR. WISEMAN:
 5 A. I'm not sure, this is an exchange between
 6 Glenda Power and Robert Thompson, so I'm not
 7 sure of the context for this exchange.
 8 CHAYTOR, Q.C.:
 9 Q. Was this ever brought to your attention, these
 10 questions and answers?
 11 MR. WISEMAN:
 12 A. Until I saw it in this document here.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, so these were never put in front of you?
 15 MR. WISEMAN:
 16 A. No.
 17 CHAYTOR, Q.C.:
 18 Q. Was there a similar draft, this is the draft
 19 we have, was there a similar Q and A's
 20 prepared for you to enable you to speak on the
 21 issue of the release of the external reports?
 22 MR. WISEMAN:
 23 A. There may have been. The peer review reports?
 24 I can't recall.
 25 CHAYTOR, Q.C.:

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1 Q. The external review reports we'll call them.
 2 MR. WISEMAN:
 3 A. There may have been some Q and A's as part of
 4 the release that I had in February, but in
 5 terms of the peer review piece, no.
 6 CHAYTOR, Q.C.:
 7 Q. Well Judge Dymond found that they weren't
 8 actually peer review reports to be protected
 9 under the Evidence Act.
 10 MR. WISEMAN:
 11 A. I now understand that, yes.
 12 CHAYTOR, Q.C.:
 13 Q. Yes. Okay, this document--so this document
 14 and the questions and answers being prepared
 15 then would be being prepared without your
 16 input?
 17 MR. WISEMAN:
 18 A. Exactly.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, yes because there were some
 21 discrepancies in here, for example, question
 22 No. 1, "Minister, have you seen the peer
 23 review documents?" And the answer is on
 24 February 19th, "Yes, I reviewed a copy not
 25 long after the Court decision."

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1 MR. WISEMAN:
 2 A. That's right.
 3 CHAYTOR, Q.C.:
 4 Q. So that's not correct?
 5 MR. WISEMAN:
 6 A. No.
 7 CHAYTOR, Q.C.:
 8 Q. And if we come down to No. 5, "Were you made
 9 aware by Eastern Health of the issues
 10 addressed in these documents?" "Eastern
 11 Health provided the department with briefings
 12 between 2005 and 2007 about the quality
 13 reviews (this could be interpreted as the
 14 Minister having seen the reports?) and the
 15 progress towards implementation of
 16 recommendations made in the reviews." Can you
 17 explain why there would be concern that the
 18 department, having obtained briefings between
 19 2005 and 2007, could be interpreted as the
 20 Minister having seen the reports?
 21 MR. WISEMAN:
 22 A. I didn't write it, so I can't comment on it,
 23 really. I've already shared with you that
 24 the, I saw the recommendations themselves
 25 summarized on a spreadsheet that was sent to

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1 me, which we talked about one day last week, I
 2 believe it was sometime in the latter part of
 3 May, I think it came into the department. I
 4 saw the spreadsheet showing the
 5 recommendations at that time, so I really
 6 can't comment on the note here.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and you didn't see the reports.
 9 MR. WISEMAN:
 10 A. No.
 11 CHAYTOR, Q.C.:
 12 Q. Prior to them being released.
 13 MR. WISEMAN:
 14 A. Not at all.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, if we could go to the next page of this
 17 document, and then No. 8, and I take it again
 18 this is Glenda Power drafting anticipated
 19 questions and potential answers. "The same
 20 people who managed the laboratory and ER/PR
 21 testing before 2005 are still in place. Do
 22 these reports not prove they should be
 23 removed?" And the option a) that she gives to
 24 the answer is "This is a difficult question,
 25 firstly there's a new position of Director of

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1 the IHC laboratory providing dedicated
 2 leadership to this role and there are new
 3 dedicated positions for technologists in this
 4 area as well. Secondly, it must be remembered
 5 that the people in place in 2005, once they
 6 identified the testing problem, initiated the
 7 retesting process at Mount Sinai, brought in
 8 the peer reviewers, suspended testing in the
 9 lab and retooled the lab until it was ready
 10 for reopening a year ago. Much positive
 11 change has occurred in the IHC lab." And then
 12 "(Robert, I'm not sure we should have the
 13 Minister defending Eastern Health lab staff,
 14 suggest alternate response below.)" Was it
 15 discussed with you any concern that any
 16 answers you might give could be perceived as
 17 you defending Eastern Health or its staff?
 18 MR. WISEMAN:
 19 A. I didn't discuss these questions with anyone.
 20 CHAYTOR, Q.C.:
 21 Q. You've never seen this.
 22 MR. WISEMAN:
 23 A. No.
 24 CHAYTOR, Q.C.:
 25 Q. And has there been any other discussion with

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1 you about any perception of you defending
 2 Eastern Health? Has that been raised with you
 3 as a concern?
 4 MR. WISEMAN:
 5 A. No, no.
 6 CHAYTOR, Q.C.:
 7 Q. So this is the first time through this
 8 document that you would be aware that your
 9 Director of Communication was noting this as a
 10 perception that she would be concerned with?
 11 MR. WISEMAN:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Mr. Wiseman, currently as Minister of Health,
 15 do you believe you have the authority on a go-
 16 forward basis to request such reports be
 17 provided to the department?
 18 MR. WISEMAN:
 19 A. That's an interesting--I guess if I could to
 20 the latitude of comment on the piece around
 21 such reports. You made the observation that
 22 Justice Dymond did not determine that this was
 23 a peer review process and you had asked me in
 24 the past, you know, why we didn't direct
 25 Eastern Health to make it available to beyond

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1 the Commission, and the issue of peer review I
 2 had, in some ways I was hoping that in that
 3 process that the outcome, there would have
 4 been some comment around what peer review--
 5 what protection peer review had because
 6 fundamentally we still had, in this particular
 7 case, Justice Dymond has indicated that these
 8 reports were not peer review, so therefore
 9 they need to be made available to--in a more
 10 public way. We still have a question and I
 11 say "we", you know, as a Minister, there is a
 12 piece of Legislation that gives protection to
 13 peer review and then there's the Inquiries
 14 Act, which does not and so the question around
 15 how privileged and how protected is peer
 16 review is still a question and a question that
 17 we need to turn our minds to, I think as a
 18 health system and there's been, as I
 19 understand it, varied opinions on that, and so
 20 there is still--we still have, as a system, us
 21 as a government, a need to now, you know, turn
 22 our heads to and have some discussion around
 23 the peer review process and whether or not
 24 that has, the degree of protection that it
 25 hysterically has had and should it have and

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1 that's an issue that we really haven't turned
 2 our heads to since Justice Dymond's ruling.
 3 So when you frame the question, do you think I
 4 have the authority? If it's--very obvious if
 5 there's a report commissioned by either one of
 6 our authorities around some aspect of their
 7 health services that is not a part of a peer
 8 review process and obviously the answer is
 9 yes. There is still this question around peer
 10 review that needs to be dealt with. I haven't
 11 turned my head to it yet, but it is a question
 12 that we need to deal with and it's surfaced in
 13 this particular instance here. And so it's an
 14 issue that we do need to, I think,
 15 collectively as a system turn our heads to and
 16 have some discussion around.
 17 CHAYTOR, Q.C.:
 18 Q. And the legislation, the Regional Health
 19 Authorities Act, which was now proclaimed
 20 April 1st of this year, if I could just direct
 21 you, please, to P-0295 and page 9 of that
 22 Exhibit?
 23 UNKNOWN SPEAKER:
 24 Q. (Inaudible) they're not entered yet.
 25 CHAYTOR, Q.C.:

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1 Q. They're not entered, okay. I will then just
 2 read it out to you. It's quite short.
 3 Section 24, "Where requested to do so by the
 4 Minister, an authority shall provide the
 5 Minister with the records, reports and other
 6 documents he or she specifies in the request."
 7 Do you have that legislation in front of you,
 8 Minister?
 9 MR. WISEMAN:
 10 A. Just you're talking about the new Regional
 11 Authorities Act?
 12 CHAYTOR, Q.C.:
 13 Q. Yes.
 14 MR. WISEMAN:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. Section 24?
 18 MR. WISEMAN:
 19 A. Sorry, twenty?
 20 CHAYTOR, Q.C.:
 21 Q. 24, should be page 9. "Where requested to do
 22 so by the Minister an authority shall provide
 23 the Minister with the records, reports and
 24 other documents he or she specifies in the
 25 request."

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1 MR. WISEMAN:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Have you turned your mind to what, if any,
 5 impact that section may have on this issue?
 6 MR. WISEMAN:
 7 A. Just, I guess, my answer that I gave you a
 8 moment ago in terms of turning your head to
 9 the peer review, I really haven't.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. So that's an issue, I take it, that's
 12 still under, you have taken under advisement?
 13 MR. WISEMAN:
 14 A. I do.
 15 CHAYTOR, Q.C.:
 16 Q. And that's something that you and your
 17 government intend to look at further?
 18 MR. WISEMAN:
 19 A. We do need to give that--in light of--I mean,
 20 Justice Dymond was clear in his ruling, it's
 21 not a question of it not being clear. There
 22 was--not that the question was put to him,
 23 either, but the question around whether or not
 24 peer review has the protection that--under the
 25 Inquiries Act or any other piece is something

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1 that we need to turn our heads to.
 2 CHAYTOR, Q.C.:
 3 Q. One of the issues, of course, in this
 4 particular case was that Eastern Health did
 5 assert protection from disclosure over those
 6 external reviews.
 7 MR. WISEMAN:
 8 A. Yes, yeah.
 9 CHAYTOR, Q.C.:
 10 Q. And which really were reports that
 11 investigated the matter. They were timed
 12 right after the issue had arose and Dr. Cook
 13 was certainly clear in saying he wanted to get
 14 to the bottom of the issue. And so has
 15 government given any thought to how on a go
 16 forward basis if a similar situation were to
 17 arise in the future, how the government can
 18 assure--and that there's another assertion
 19 because it well could be done under a quality
 20 assurance, by a quality assurance committee or
 21 a peer review committee that those reports
 22 could be done and fit within the four corners
 23 of Evidence Act in a future case. So has
 24 government turned its mind towards how it is
 25 going to insure it has access to all relevant

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1 information to be able to determine if it has
 2 to make the judgment call that you talked
 3 about this morning?
 4 MR. WISEMAN:
 5 A. I think that's a part of the question that
 6 I've answered a moment ago. This process of
 7 peer review and the mechanisms for providing a
 8 review in an environment where, you know,
 9 those individuals who are experienced and
 10 skilled and in a position to be able to do
 11 that would want to do it in an environment
 12 where, you know, there's not a blame being
 13 assigned in some fashion and so that which is--
 14 you know, the principle behind the peer
 15 review process in the first place, as I
 16 understood it, is provide an ability to be
 17 able to allow or to allow a clinician's work
 18 to be reviewed by another clinician, expert in
 19 that field, to provide some critique and
 20 comment with a view of creating an improvement
 21 on a go forward basis without having to assign
 22 blame or having to create a circumstance
 23 where, you know, there would be a reluctance
 24 on the part of the reviewer to be as objective
 25 as they ordinarily would be if they had some

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1 element of protection. That was the
 2 principle, as I understood it. Obviously, you
 3 know, we would want to make sure that we still
 4 have an ability to have a--you know, and I
 5 think society would be well served by having a
 6 mechanism to insure that, you know, clinical
 7 decisions and clinical judgment is reviewed by
 8 others who have expert, you know, expertise in
 9 that area. And the issue of peer review is an
 10 area that now has come under some discussion
 11 as a result of the whole issue of the
 12 Inquiries Act. And where Justice Dymond
 13 didn't answer that question in his judgment,
 14 it's still one that remains to be dealt with.
 15 So it's linked to the question you're now
 16 posing is, has government turned its head to
 17 how can we insure that each and every time
 18 there's a review done, that it's done in a
 19 fashion that it gets the objective of insuring
 20 that insight is gained while at the same time
 21 insures that, you know, there's a disclosure
 22 of that insight. And that's a part and parcel
 23 of that bigger consideration that we haven't
 24 turned our heads to.
 25 CHAYTOR, Q.C.:

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1 Q. Yes, because if the reports are cloaked with
 2 the protection afforded under the Evidence
 3 Act, there could be well--there well could be
 4 information in that that need to be shared in
 5 the sake of public interest and the public
 6 health of the people of this province. There
 7 could be information in there that should be
 8 shared, but with that protection the authority
 9 who has that information would be unable to do
 10 so, would feel that they can't do that because
 11 then they're going to waive any protection
 12 they may be seeking to claim through the
 13 process. So, for example, in this situation
 14 there may well have been information contained
 15 in those reports which should be forwarded on
 16 to the other health authorities, just for an
 17 example, or shared otherwise with the
 18 Department to enable the Department to make
 19 different decisions. So the concern being
 20 that if that protection is there and the
 21 reliance upon authority is going to be on the
 22 Evidence Act, what can the government do,
 23 whether it's a parallel process in terms of a
 24 non-protected investigation, what will the
 25 government do to insure that that situation

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1 for the benefit of the public interest will
 2 not occur in the future?
 3 MR. WISEMAN:
 4 A. Until government turns its head to it, I can't
 5 give you an answer today that there's a
 6 solution to that. You know, this is a, it's a
 7 significant issue that you raise, it was a
 8 significant issue that got raised in the
 9 question before Justice Dymond and government
 10 hasn't turned its head to it. You know, the
 11 points you're making are valid. You've asked
 12 in the past, you know, why as a Minister
 13 hadn't directed Eastern Health and I think I'd
 14 indicated to you that--and why I hadn't
 15 intervened in that court proceeding before
 16 Justice Dymond. I thought it was a good
 17 opportunity in an environment where, you know,
 18 those who had standing could make argument in
 19 and around the merits of peer review, as we
 20 now understand it, and if there was a, you
 21 know, an opportunity to have Justice Dymond to
 22 voice an opinion and express a view on that in
 23 his ruling, then it would have provided a
 24 foundation for us as a government to know how
 25 to move forward. And for government to

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1 interfere in that process and have its own
 2 opinion would have in some way potentially
 3 influence the outcome. And I thought it was
 4 better to have that kind of, you know, much
 5 more objective arguments being made by many
 6 sides of that point to Justice Dymond. But at
 7 the end of the day, you know, he made a ruling
 8 on the issue at hand, which should be
 9 information in the reports be made public and
 10 deemed that they weren't peer review and they
 11 should be made public.
 12 CHAYTOR, Q.C.:
 13 Q. Yes, and my -
 14 MR. WISEMAN:
 15 A. I don't know what -
 16 CHAYTOR, Q.C.:
 17 Q. - I'm not rehashing that issue. My intent is
 18 on a go forward basis what can be put in
 19 place.
 20 MR. WISEMAN:
 21 A. And I guess, and what I'm saying to you is
 22 that, you know, you're asking me for a
 23 definitive answer here today and what I'm
 24 telling -
 25 CHAYTOR, Q.C.:

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1 Q. Or what the government--yes.
 2 MR. WISEMAN:
 3 A. - you--what I'm telling you is I don't have a
 4 definitive answer for you today.
 5 CHAYTOR, Q.C.:
 6 Q. But it's being worked on?
 7 MR. WISEMAN:
 8 A. I've indicated to you that government has to
 9 turn its head to this issue of peer review in
 10 light of not having the, a part of Justice
 11 Dymond's ruling commenting around the peer
 12 review process itself. He commented on the
 13 instance before him with respect to these
 14 reports and his judgment centred on these
 15 reports only. The larger picture of peer
 16 review and the protection it gets under the
 17 Evidence Act versus what was envisaged under
 18 the Inquiries Act is another, another bigger
 19 topic and one that we need to turn our heads
 20 to. But I don't have an answer for you today,
 21 but it is an issue that government does need
 22 to turn its head to.
 23 CHAYTOR, Q.C.:
 24 Q. Yes. The concern being so that if there were
 25 to be a similar situation in the future in

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1 terms of any relevant documentation or
 2 information that comes out of that, that could
 3 be pertinent to the health and well being of
 4 the residents of this province, that the
 5 government would have a plan in place as to
 6 how to deal with that?
 7 MR. WISEMAN:
 8 A. Yeah, we do need to turn our heads to the
 9 issue, yes.
 10 CHAYTOR, Q.C.:
 11 Q. Are you aware of the existence of any other
 12 expert opinions, analysis regarding this ER/PR
 13 issue?
 14 MR. WISEMAN:
 15 A. With in Eastern--the issue within Eastern -
 16 CHAYTOR, Q.C.:
 17 Q. At all.
 18 MR. WISEMAN:
 19 A. Oh, the concept of ER/PR?
 20 CHAYTOR, Q.C.:
 21 Q. Yeah, to your knowledge has any other expert,
 22 other than Dr. Banerjee and Ms. Wegrynowski,
 23 has any other expert given an opinion or
 24 conducted any analysis on this issue?
 25 MR. WISEMAN:

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1 A. Not that I'm aware of.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. I take it, though, Mr. Wiseman, you
 4 share the concern that I'm expressing, that we
 5 could have a state of affairs that the only
 6 two reviews conducted in the aftermath of a
 7 situation such as this would be or could have
 8 been deemed to have been protected from
 9 disclosure?
 10 MR. WISEMAN:
 11 A. I understand the question you're raising and -
 12 CHAYTOR, Q.C.:
 13 Q. And I take it you share that concern, though?
 14 MR. WISEMAN:
 15 A. And I understand the points that you're
 16 raising. And I think one of the things that
 17 we need as a government is to turn our heads
 18 to is the issue of peer review and what
 19 protection it has historically been afforded
 20 through the Evidence Act. And we do need to
 21 insure that we have a mechanism in place that
 22 allows us to have a critique of clinical
 23 decisions and it's done in a fashion that at
 24 the end of the day serves the best interests
 25 of the health and welfare of the people of the

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1 province.
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. WISEMAN:
 5 A. We do share that view. And that--and when we
 6 turn our heads to this, because it's an issue
 7 that's before us as we speak and it's an issue
 8 that we do have to resolve and to deal with.
 9 CHAYTOR, Q.C.:
 10 Q. Yes. Thank you. If I could have, please--I'm
 11 going to move on now to another issue. P-
 12 0158? This is correspondence dated November
 13 16th, 2007 to Mr. Thompson from Louise Jones,
 14 interim President and Chief Executive Officer
 15 of Eastern Health. And this regards funding
 16 for information management systems. And Ms.
 17 Jones writes, "Our meeting earlier this week
 18 was indeed beneficial. With respect to
 19 Eastern Health's information management and
 20 decision support requirements you may be aware
 21 that the board chair has been attempting and
 22 is still attempting to get a meeting with the
 23 Minister in relation to the Premier's comments
 24 regarding providing resources to Eastern
 25 Health to insure that we are able to address

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1 our information management and decision
 2 support requirements." So what's that all
 3 about, Mr. Wiseman, did you have a meeting
 4 with Ms. Dawe afterwards on this issue? It
 5 says further on in the letter, you can see, "I
 6 understand that Joan Dawe, Board Chair, will
 7 continue to follow-up with the Minister to
 8 identify a time to deliver these
 9 recommendations and have full discussion about
 10 Eastern Health's needs."
 11 MR. WISEMAN:
 12 A. We did, Ms. Dawe and I did have a
 13 conversation around their need for information
 14 management support. When it happened, I can't
 15 recall.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And is this the first time that the
 18 issue of Eastern Health having information
 19 management system requirements came to your
 20 attention?
 21 MR. WISEMAN:
 22 A. In the budget process that would have occurred
 23 back in 2007, you know, there's all of the
 24 boards had a number of requests as a part of
 25 that budget submission that would have, some

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1 of it would have dealt with information
 2 management, some would have dealt with
 3 technology. But the--so that would have been
 4 the first time that, you know, that--but I
 5 wouldn't have been looking at Eastern Health
 6 in isolation, I would have been looking at all
 7 four authorities as a part of that budget
 8 process.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And I take it during the spring, late
 11 May, mid to late May and into the beginning of
 12 June and when Eastern Health was giving you
 13 the reassurances we've talked at some length
 14 about on patient contact information, I take
 15 it they didn't bring to your attention in
 16 those discussions that they had information
 17 management issues?
 18 MR. WISEMAN:
 19 A. I don't recall it coming up in that. The
 20 conversation at that time was in around the,
 21 you know, the issue before us which was, you
 22 know, how do we go about, you know, fixing the
 23 problem rather than--there may have been some
 24 reference at that time to the need for
 25 continued investment in that, but that wasn't

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1 necessarily the focus of much of the
 2 discussion back in May.
 3 CHAYTOR, Q.C.:
 4 Q. You were taking from the discussions repeated
 5 reassurances that everybody had been
 6 contacted?
 7 MR. WISEMAN:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. So if it had been brought to your attention
 11 that there were issues regarding information
 12 management, would you have felt reassured?
 13 MR. WISEMAN:
 14 A. The issue of the information--this is a
 15 budgetary process we're referring to here.
 16 Each and every year all of our health
 17 authorities make submissions for, you know,
 18 it's a request for funding for a variety of
 19 initiatives, so the information management
 20 would have been a part of that. I don't
 21 recall a year--I only--I have only been around
 22 a year, but I can't envisage where there would
 23 have been a year where any authority would
 24 have asked for and got exactly what they asked
 25 for because the wish list in any budgetary

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1 process is always pretty extensive.
 2 CHAYTOR, Q.C.:
 3 Q. Right.
 4 MR. WISEMAN:
 5 A. And government's capacity to respond would be
 6 not always consistent with the request. So
 7 the notion that there was a, you know, request
 8 for information--support for information
 9 support or technology would have been known to
 10 me as a part of last year's budget process,
 11 yes.
 12 CHAYTOR, Q.C.:
 13 Q. When you were being reassured by Eastern
 14 Health that all patients had been contacted,
 15 did they, in giving you those reassurances,
 16 put any kind of qualifier on that in terms of,
 17 "Well, to the best of our ability with the
 18 information management systems that we have,"
 19 was it raised in that context that, "yes, we
 20 have contacted everyone but here's what we're
 21 dealing with."?
 22 MR. WISEMAN:
 23 A. No. In the issue--as I've said to you
 24 repeatedly here, during the period when I was
 25 reassuring people that if everybody was

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1 contacted, I used the phrase "Unequivocal".
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. WISEMAN:
 5 A. They had been consistent, persistent in their
 6 comments and it was only until sometime the
 7 first part of June of last year, and I don't
 8 know the exact date, within the first week or
 9 10 days or so, June, I think it was, there
 10 would have been a meeting involved the Deputy
 11 at that time and there's some qualifiers
 12 starting to be placed on the information. But
 13 prior to that there were no qualifiers, there
 14 were no, you know, best we have available,
 15 none of that kind of phrase was being used.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, right. So during that time period, that
 18 was my question, this wasn't raised as an
 19 issue with you?
 20 MR. WISEMAN:
 21 A. No.
 22 CHAYTOR, Q.C.:
 23 Q. The second page under "Background," it says,
 24 "Over the past two years Eastern Health has
 25 been reviewing its clinical and administrative

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1 support system as it moves forward in its
 2 integration." Prior to what we see here in
 3 this document--I assume this document, was
 4 this a presentation made to you, were you ever
 5 given this presentation by Eastern Health?
 6 MR. WISEMAN:
 7 A. It may have been a part of something that they
 8 gave me, yes.
 9 CHAYTOR, Q.C.:
 10 Q. If you just want to have a look through, I'll
 11 just--does it look familiar to you?
 12 MR. WISEMAN:
 13 A. Yeah.
 14 CHAYTOR, Q.C.:
 15 Q. That's pretty much -
 16 MR. WISEMAN:
 17 A. Yeah.
 18 CHAYTOR, Q.C.:
 19 Q. So my question is whether or not prior to this
 20 presentation you're aware of whether you had
 21 had a similar presentation made by Eastern
 22 Health for seeking funding for information
 23 management and decision support or you're
 24 aware of whether or not a similar presentation
 25 was made to the Department prior to you

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1 becoming Minister?
 2 MR. WISEMAN:
 3 A. I can't comment about what happened prior to
 4 becoming Minister, but this would have been
 5 the first I would have had on this particular
 6 piece here. I have one on the equipment that
 7 was similar to this, but there would have only
 8 been one on information management.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. So this was it?
 11 MR. WISEMAN:
 12 A. (No audible response).
 13 CHAYTOR, Q.C.:
 14 Q. On the third page, second to last paragraph,
 15 "With the creation of Eastern Health in 2005
 16 government identified 98 positions with an
 17 associated savings of 5.7 million to be
 18 achieved as a result of regionalization. Of
 19 the 98 positions identified 13.5 positions
 20 were to be reduced in information management,
 21 16 positions in human resources management, 2
 22 in quality and approximately 15 directly
 23 related to financial management and
 24 accounting. The organization did reduce
 25 approximately 37 positions for a saving of

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1 \$1.6 million." Do you know if those positions
 2 mentioned there in quality and information
 3 management were, in fact, cut?
 4 MR. WISEMAN:
 5 A. I don't know.
 6 CHAYTOR, Q.C.:
 7 Q. Did you ask Ms. Jones that when she gave this
 8 presentation?
 9 MR. WISEMAN:
 10 A. I can't recall, but I don't know.
 11 CHAYTOR, Q.C.:
 12 Q. Since the reduction of the health care boards
 13 from 14 to four has the government conducted
 14 any analysis or evaluation to determine the
 15 feasibility or achievability of the goals that
 16 were set by the amalgamations?
 17 MR. WISEMAN:
 18 A. No, we haven't.
 19 CHAYTOR, Q.C.:
 20 Q. Is there any intention to do so?
 21 MR. WISEMAN:
 22 A. I mean, one of the things that I've said with
 23 respect to the consolidation of health boards
 24 is it happened in 2005, the boards are still
 25 going through some transition issues that they

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1 need to deal with. This is a major
 2 undertaking to bring together what was 14
 3 authorities before into four. And any
 4 evaluation that would take place of whether or
 5 not that's worked or not worked needs a little
 6 time for the organization to conclude the
 7 transition. By way of comparison, you know, a
 8 similar process occurred out in Manitoba and
 9 they didn't do their evaluation until after
 10 ten years. Organizations while in transition
 11 and still going through transition to evaluate
 12 them to determine whether or not it was a
 13 success while they're still in the middle of a
 14 process may not get you the kind of insight
 15 that you'd want to determine what you might
 16 want to do on a go forward basis.
 17 CHAYTOR, Q.C.:
 18 Q. So it's not government's intention, I take it,
 19 to do that in the near future, to undertake
 20 the evaluation. What is the time frame?
 21 MR. WISEMAN:
 22 A. When the transition--I've indicated we haven't
 23 pegged a definitive time. I've made public
 24 comments that, you know, that an organization
 25 restructuring like this would need at least

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1 five years to actually deal with some of the
 2 transition issues and then and only then would
 3 it be, you know, it would be beneficial to
 4 have an evaluation of the success of that
 5 consolidation and then you're in a better
 6 position to determine whether or not it
 7 actually worked.
 8 CHAYTOR, Q.C.:
 9 Q. Was there research at some point, though,
 10 being conducted by Dr. Patrick Parfrey on the
 11 issue, are you aware of that?
 12 MR. WISEMAN:
 13 A. I'm not aware yet.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. There was some reference in the
 16 documentation, but perhaps that's before your
 17 time.
 18 MR. WISEMAN:
 19 A. Quite possibly, yes.
 20 CHAYTOR, Q.C.:
 21 Q. Or perhaps it's a different issue. Okay, so
 22 you're not aware of that?
 23 MR. WISEMAN:
 24 A. Not aware of it, no.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And then the last paragraph, "The
 2 following graph has been utilized by Eastern
 3 Health in presentations over the past two
 4 years to point out the fact the organization
 5 is under invested, based upon the CIHI Canada
 6 database in the areas of administration
 7 support and information management." So
 8 what's been indicated here by Ms. Jones is
 9 that the graph that she attaches on the next
 10 page which we have here, in this presentation
 11 she's saying that the graph has been utilized
 12 in presentations over the past two years to
 13 point out the fact the organization is under
 14 invested in those areas, including information
 15 management. But to your knowledge that
 16 presentation that she's referring to hadn't
 17 been made to you before and you're unaware of
 18 whether it was made to the Department before?
 19 MR. WISEMAN:
 20 A. You're right, yes.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. Now, this is November, '07. I
 23 understand that you held a press conference in
 24 November, '07. If we could have P-0128,
 25 please, page 55? Okay, Mr. Wiseman, this is a

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1 news release, November 2nd, 2007. Perhaps you
 2 could tell us, what was the purpose of this
 3 news release? It's indicated to be "Health
 4 Minister provides update on work to secretary
 5 to Cabinet (health issues) on ER/PR retesting
 6 process." What was the purpose of the news
 7 release at this point in time?
 8 MR. WISEMAN:
 9 A. Fundamentally as the heading would indicate,
 10 you know, we had--I made some reference last
 11 week, as well, to the establishment of the
 12 task force in adverse events. But also as a
 13 part of the role that Robert Thompson was
 14 carrying out, we needed to--he pulled together
 15 a team of people from the Centre for Health
 16 Information to work with him and his staff to
 17 try to, as what started out as a process to
 18 identify the communication pieces around the
 19 ER/PR, those individuals who were--had their
 20 tests done and retested and had communication
 21 actually taken place. As a part of that
 22 process he needed to work at reconstructing
 23 the whole database, which included identifying
 24 who may have been impacted, who was tested,
 25 who was retested and what tests were sent out

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1 for redoing at Mount Sinai. And what this is
 2 here is an update on some of the early
 3 findings of that piece of work that he's
 4 doing. And the release goes on to talk about
 5 the work of the group that's in place, but
 6 also identifies key pieces of information
 7 that's in here that's updating it. As you may
 8 recall, in earlier documentation that the
 9 Eastern Health was reporting back last year
 10 there was 939 patients had originally ER/PR
 11 tests done between that period and they were
 12 sent for retesting to Mount Sinai. You know,
 13 we now indicate that in here that there was a-
 14 -like, that number is going to be in excess of
 15 1000, and that the other thing we indicate in
 16 here, that there were some cases found, 15
 17 cases, in fact, that had been found that were
 18 not sent out to Mount Sinai for retesting and
 19 should have been.
 20 CHAYTOR, Q.C.:
 21 Q. So there were 15 new cases which had just been
 22 identified?
 23 MR. WISEMAN:
 24 A. Yes, that needed to have been sent out and
 25 they had been sent out over the course of the

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1 months preceding this release.
 2 CHAYTOR, Q.C.:
 3 Q. And do you know where those cases originated
 4 and why they had been overlooked?
 5 MR. WISEMAN:
 6 A. They were identified as a part of the work
 7 being done by the Centre for Health
 8 Information. In terms of their--they would--
 9 some were obviously as they went about the
 10 doing their work, they realized that the
 11 information that tracked these patients and
 12 the information that tracked whether or not it
 13 was being sent out for testing and the return,
 14 that was, the information was either
 15 catalogues or logged in in a variety of
 16 sources. So there was multiple sources that
 17 they had to go to to try to reconstruct this
 18 number and in so going through those multiple
 19 sources of information that's when they
 20 recognized and identified these 15.
 21 CHAYTOR, Q.C.:
 22 Q. Did you understand that most, if not all of
 23 those patients were from the Carbonear area?
 24 MR. WISEMAN:
 25 A. I didn't understand that.

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1 CHAYTOR, Q.C.:

2 Q. You didn't know that, not from any particular

3 area?

4 MR. WISEMAN:

5 A. No.

6 CHAYTOR, Q.C.:

7 Q. Okay. So what was your source of information

8 about how those patients were identified?

9 MR. WISEMAN:

10 A. My source?

11 CHAYTOR, Q.C.:

12 Q. Yes, who told you?

13 MR. WISEMAN:

14 A. This would have come from Robert Thompson, who

15 was heading up this process.

16 CHAYTOR, Q.C.:

17 Q. And you continue on then to say in this

18 release, as well, "One of the key learnings is

19 that record keeping at Eastern Health is

20 clearly inadequate in this area and I have

21 made it clear to them that this situation must

22 be addressed immediately."

23 MR. WISEMAN:

24 A. Um-hm.

25 CHAYTOR, Q.C.:

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1 Q. Is this one of the comments that Ms. Dawe

2 brought to your attention?

3 MR. WISEMAN:

4 A. I don't know if this particular one would have

5 been brought to my attention as a quote, but,

6 you know, the thrust, I guess, of my comment

7 here would be consistent with some of the

8 comments I made to you earlier this morning.

9 CHAYTOR, Q.C.:

10 Q. And it goes on to say that "It is important to

11 note," and again, this is you being quoted in

12 saying this, "It is important to note that the

13 ER/PR testing protocols in place today are on

14 par with the best processes in the country and

15 patients should have confidence that they are

16 receiving quality of treatment today."

17 MR. WISEMAN:

18 A. Yes.

19 CHAYTOR, Q.C.:

20 Q. Mr. Wiseman, where--what's the source of this

21 information that the ER/PR testing protocols

22 in place today are on par with the best

23 processes in the country?

24 MR. WISEMAN:

25 A. That would have come about as a result of, you

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1 know, my confidence to be able to say that

2 came about as a result, which was my answer to

3 you last week with respect to the initiatives

4 undertaken by Eastern Health to improve

5 quality, the resources that they've allocated

6 to this area and some of the--the

7 implementation of the recommendations that

8 were made in the reports that you referenced

9 earlier, the external reviews.

10 CHAYTOR, Q.C.:

11 Q. So that's your assessment. At this point in

12 time you would not have seen the reviews?

13 MR. WISEMAN:

14 A. No.

15 CHAYTOR, Q.C.:

16 Q. Right. At this point in time.

17 MR. WISEMAN:

18 A. No.

19 CHAYTOR, Q.C.:

20 Q. Okay. So that's your assessment based on what

21 information had been given to you by Eastern

22 Health as to what recommendations they had put

23 in place?

24 MR. WISEMAN:

25 A. This is a view the Department now, based--at

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1 this particular time that's the view of the

2 Department that I'm expressing here and it's

3 based on the initiatives undertaken by Eastern

4 Health to provide quality programming in that

5 area.

6 CHAYTOR, Q.C.:

7 Q. And it's not based on anything that you've

8 heard from any external reviewer?

9 MR. WISEMAN:

10 A. Not directly to me, no.

11 CHAYTOR, Q.C.:

12 Q. Well -

13 MR. WISEMAN:

14 A. Well, in terms of if you're asking -

15 CHAYTOR, Q.C.:

16 Q. Indirectly?

17 MR. WISEMAN:

18 A. No, no, no. If you're asking if I have

19 engaged somebody to actually give me that

20 opinion, it was done on external review, no.

21 CHAYTOR, Q.C.:

22 Q. Are you aware of anyone who has said that,

23 that the protocols in place today are on par

24 with the best processes in the country?

25 MR. WISEMAN:

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1 A. At the time I said that here I hadn't, but now
 2 I think I read to you the other day a
 3 reference to the quality reports that were
 4 done in December, which would have been
 5 following this. But at the time I made this
 6 statement, I wasn't aware that -
 7 CHAYTOR, Q.C.:
 8 Q. You're referring to the QMP-LS report?
 9 MR. WISEMAN:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. But I don't see anywhere in there where it
 13 says that they're on par with the best
 14 processes in the country.
 15 MR. WISEMAN:
 16 A. No.
 17 CHAYTOR, Q.C.:
 18 Q. There's a comparison made to similar labs in
 19 Ontario.
 20 MR. WISEMAN:
 21 A. Yes, I understand that, yes.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. So my question is, because, of course,
 24 this is part of the Commission's mandate and
 25 if there is information out there that says

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1 that, that would be relevant -
 2 MR. WISEMAN:
 3 A. Yes, and -
 4 CHAYTOR, Q.C.:
 5 Q. - and of interest to the Commissioner to know
 6 if somebody has assessed the process and
 7 protocols as being on par with the best in the
 8 country.
 9 MR. WISEMAN:
 10 A. Yes. No, there hasn't been.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, thank you. If we could have 0246,
 13 please. By the way, Mr. Wiseman, that press
 14 release, was that actually done as a press
 15 conference, the February -- sorry, November
 16 2nd, 2007?
 17 MR. WISEMAN:
 18 A. That one was, yes.
 19 CHAYTOR, Q.C.:
 20 Q. That was done as a press conference, was it?
 21 MR. WISEMAN:
 22 A. Yes, yeah.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. The next one I wanted to bring your
 25 attention to is February 22nd, 2008. I

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1 understand that you held a press conference
 2 then as well?
 3 MR. WISEMAN:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And what was the purpose of that press
 7 conference?
 8 MR. WISEMAN:
 9 A. That was again to provide a further -- the
 10 work of the Centre for Health Information had
 11 progressed, and Mr. Thompson was now in a
 12 position to provide me with updated
 13 information and what we were now doing was
 14 going out with that new updated information.
 15 In addition, you know, as a Government we had
 16 now made some decisions in terms of some
 17 things that we had already learnt and that we
 18 wanted to now implement some -- take some
 19 action, make some investments in some areas,
 20 and also make some policy decisions about what
 21 we might do on a go forward basis, so in
 22 addition to providing the update of
 23 information, we made an announcement as well
 24 of some initiatives that Government was
 25 undertaking to strengthen our information

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1 management systems, but also to invest in
 2 issues such as mandatory accreditation in this
 3 area.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. So on this, the investment in the
 6 information management systems, did that arise
 7 from the presentation by Ms. Jones back in
 8 November of 2007?
 9 MR. WISEMAN:
 10 A. It would have come from that, yes.
 11 CHAYTOR, Q.C.:
 12 Q. And I'm just going to start now with -- by the
 13 way, whose idea was this press conference?
 14 MR. WISEMAN:
 15 A. I'm not certain if it would have been -- the
 16 manner in which we communicate information is
 17 either by way of a press release or a press
 18 conference, and this would here would require
 19 -- Mr. Thompson had done a technical briefing
 20 as well to be able to explain how he came up
 21 with the numbers that he did, and talked a
 22 little bit about the work that he was doing,
 23 so there was a technical briefing that
 24 occurred prior to the press conference, so
 25 that would have been dictated by the nature of

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1 the information and how much detail we need to
 2 be able to disclosure. If it's a simple short
 3 message, then a press release could go out.
 4 If it's a little more detailed, there would be
 5 a press conference.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, but is it -- is it your decision that
 8 it's time to get the information out there?
 9 Are you the person making that decision?
 10 MR. WISEMAN:
 11 A. The piece around the -- that kind of evolves
 12 in terms of the state of readiness. You know,
 13 when we -- in this particular case, the
 14 information itself that Mr. Thompson was
 15 providing, you know, because his database is -
 16 - the work that he's doing is changes, so he
 17 might be trying to conclude a piece of
 18 analysis he's doing, so sometimes there might
 19 be a delay as a result of him wanting to
 20 conclude a piece of analysis. The other piece
 21 was there was some investment decisions here
 22 that Cabinet needed to turn its head to. So,
 23 therefore, there was that requirement that
 24 that decision be made, so once both were
 25 ready, then that's what dictated the timing

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1 here.
 2 CHAYTOR, Q.C.:
 3 Q. So Cabinet would have been involved in giving
 4 the go ahead with this particular --
 5 MR. WISEMAN:
 6 A. The funding piece.
 7 CHAYTOR, Q.C.:
 8 Q. The funding piece?
 9 MR. WISEMAN:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and in terms of direction, in terms of
 13 going out and communicating and the manner in
 14 which you communicate this, who would give the
 15 ultimate okay on that?
 16 MR. WISEMAN:
 17 A. At the end of the day, it would have been no
 18 doubt through my office, but the involvement
 19 in -- it's not one of these that there's a
 20 great debate and exchange around -- you know,
 21 the communications people will provide some
 22 advice as to how we might best get the message
 23 out or get this communicated and what might be
 24 the best mechanism to inform people. So then
 25 it would have just grown from there. I don't

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1 recall this being a topic of a great debate or
 2 discussion on whether we do it this way or
 3 some other way.
 4 CHAYTOR, Q.C.:
 5 Q. And was the Premier's Office or the Premier
 6 involved in giving any direction on this?
 7 MR. WISEMAN:
 8 A. The Premier's Office would have been involved
 9 in whether it would have been the -- you know,
 10 the vetting of some of the content of the
 11 release that went out with it, but they would
 12 have -- I suspect, would have been involved in
 13 reviewing the documentation.
 14 CHAYTOR, Q.C.:
 15 Q. If we could have P-060. I'll come back to
 16 0246. If we could have P-060 for a moment,
 17 please. I'm sorry, it's 0260. So this is
 18 just an e-mail here from Glenda Power to
 19 yourself, Robert Thompson, and Don Keats, who
 20 I take it is your new Deputy Minister,
 21 February 21st, 2008.
 22 MR. WISEMAN:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. And it says, "Elizabeth has indicated we're

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1 good to go in the morning, 10:30 technical
 2 briefing, followed by Minister and Pat to
 3 media". Pat, I take it, is Pat Pilgrim, will
 4 meet at nine. Minister, I will then provide
 5 final copy of speaking notes and Q & A's as
 6 per edits from Robert. No huge changes". So
 7 "Elizabeth has indicated we're good to go in
 8 the morning", who was Elizabeth?
 9 MR. WISEMAN:
 10 A. That would have been in reference to Elizabeth
 11 Matthews, Director of Communications in the
 12 Premier's Office.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. We see that reference to Pat, Pat
 15 Pilgrim, from Eastern Health.
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Why was Eastern Health involved in this news
 20 conference?
 21 MR. WISEMAN:
 22 A. I suspect that it had to do with the fact that
 23 we were making some investments within Eastern
 24 Health, and that there might be some issues
 25 here that -- some questions that might arise

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1 that Eastern might be in a better position to
 2 answer them than the Department might be.
 3 CHAYTOR, Q.C.:
 4 Q. And if we could go back then, please, to 0249.
 5 This is an e-mail exchange between Pat Pilgrim
 6 and Robert Thompson, February 20th, 2008, and
 7 I believe it begins at the bottom with Robert
 8 e-mailing to Ms. Pilgrim at 7:20 p.m, sending
 9 along a draft data release background, "The
 10 draft, early lessons learned, and budget
 11 initiatives backgrounder", and then he goes on
 12 at the bottom paragraph to state, "As for
 13 Eastern's role in the technical briefing, we
 14 suggest no role. As for Eastern's role in the
 15 press conference, we suggest the Minister take
 16 the lead role and in Louise's absence that you
 17 join him on the podium. The Minister's two
 18 big messages are related to budget initiatives
 19 and the fact that data has been sent to the
 20 Commission. Therefore, the key Eastern Health
 21 message would be around the data access for
 22 families of the deceased. Of course, the media
 23 will have many questions and you can
 24 anticipate that they may ask you some of them
 25 [why didn't Eastern know how many people were

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1 sent, how come deceased was underestimated,
 2 etc] we can discuss all of those questions
 3 tonight". So, Mr. Wiseman, was part of the
 4 information to be released at this time around
 5 the deceased patients and a change in the
 6 number of the deceased?
 7 MR. WISEMAN:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And it appears that Robert Thompson is
 11 suggesting that the role of Eastern Health
 12 would be around how the deceased families
 13 could make contact with Eastern Health?
 14 MR. WISEMAN:
 15 A. Yeah.
 16 CHAYTOR, Q.C.:
 17 Q. If we could go back now then, please, to 0246,
 18 and this is earlier on the same day, and on
 19 the bottom of the page, Robert Thompson's e-
 20 mail to Pat Pilgrim, February 20th, 2008, at
 21 8:03 a.m. talking about some feedback received
 22 from Debbie on yesterday's meeting. Do you
 23 know what meeting is being referred to there?
 24 MR. WISEMAN:
 25 A. I have no idea.

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1 CHAYTOR, Q.C.:
 2 Q. You didn't attend that meeting?
 3 MR. WISEMAN:
 4 A. No.
 5 CHAYTOR, Q.C.:
 6 Q. "Important that we receive further feedback
 7 from you today. Can we meet late morning?
 8 Will you have additional feedback then? We
 9 also need to coordinate on the "deceased"
 10 messages and figure out how tomorrow will
 11 unfold. Therefore, perhaps we should include
 12 our Comm people so everyone is on the same
 13 page. Does 12 noon sound good". Now this is
 14 Mr. Thompson to Ms. Pilgrim suggesting they
 15 need -- we also need to coordinate on the
 16 "deceased" messages and figure out how
 17 tomorrow will unfold, and suggesting perhaps
 18 including the Comm, I take it to mean
 19 communication people, so everyone is on the
 20 same page. Mr. Wiseman, do you know what
 21 that's referring to?
 22 MR. WISEMAN:
 23 A. Only on the basis of what you read earlier in
 24 terms of the kind of questions that Ms.
 25 Pilgrim would answer with respect to, you

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1 know, how families of the deceased would be
 2 able to contact them, but beyond that, I don't
 3 know.
 4 CHAYTOR, Q.C.:
 5 Q. What would the deceased messages be if you're
 6 announcing that the numbers have changed and -
 7 -
 8 MR. WISEMAN:
 9 A. I have no idea.
 10 CHAYTOR, Q.C.:
 11 Q. You have no idea. Was this discussed with
 12 you?
 13 MR. WISEMAN:
 14 A. The only thing that I can -- the only thing
 15 that -- in terms of the message here was
 16 information about how the families of the
 17 deceased could get information. That was the
 18 only message that I had any discussion around
 19 in terms of --
 20 CHAYTOR, Q.C.:
 21 Q. But that would be fairly factual; here's the
 22 number of deceased and here's how the families
 23 can get in touch.
 24 MR. WISEMAN:
 25 A. Exactly.

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1 CHAYTOR, Q.C.:

2 Q. Why would anyone have to touch base and

3 coordinate that?

4 MR. WISEMAN:

5 A. That's a conversation you'd need to have with

6 Mr. Thompson. I really don't know.

7 CHAYTOR, Q.C.:

8 Q. So this wasn't brought to your attention?

9 MR. WISEMAN:

10 A. No, no.

11 CHAYTOR, Q.C.:

12 Q. 0248, please, and this is an e-mail -- the

13 only reason I bring this one to your

14 attention, it's an e-mail from Ms. Pilgrim to

15 Mr. Thompson again, February 20th, 2008, and

16 she's indicating this is really not working

17 for us, there seems to be some time pressure,

18 and she says, "What is the great rush with

19 this, what difference will another day make

20 other than give us an opportunity to try to be

21 prepared for this. I have told you that we

22 work with one great limitation here. There

23 are many stakeholders and they are busy

24 clinical people. I cannot get them. I cannot

25 get anyone right now that I need. I know that

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1 Oscar is not available this evening. I would

2 dare not ask Nash to come in to do anything",

3 and she goes on from there. I should finish

4 that sentence perhaps, "after his involvement

5 today with the media". My question is that

6 Eastern Health seems to have been articulating

7 to Mr. Thompson that they felt under some

8 pressure to pull this news conference off at

9 that particular point in time. Was that

10 brought to your attention?

11 MR. WISEMAN:

12 A. It may have -- Robert may have indicated that

13 they had to really push to get this done, or

14 that they were rushed to get it done, but him

15 and I wouldn't have engaged in a level of

16 conversation to determine whether or not, you

17 know, if they expressed a concern, that he

18 wouldn't have come to me and said, listen, can

19 we postpone it because of -- this is the level

20 of detail that Robert would easily have dealt

21 with and would have worked it through with Pat

22 Pilgrim.

23 CHAYTOR, Q.C.:

24 Q. Okay, and this is February 20th, 2008. When

25 did your actual press conference go ahead?

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1 MR. WISEMAN:

2 A. It was on the 22nd.

3 CHAYTOR, Q.C.:

4 Q. So was it postponed?

5 MR. WISEMAN:

6 A. I don't know.

7 CHAYTOR, Q.C.:

8 Q. And the idea of meeting to consult with

9 clinical people on the information that was

10 going to be released here regarding numbers of

11 deceased and how the families of the deceased

12 could make contact, and information on

13 information management, do you know why there

14 was a need to discuss that with clinical

15 people?

16 MR. WISEMAN:

17 A. I have no idea. The issue with -- I think one

18 of the things I just want to point out for

19 your benefit here, you know, Robert Thompson,

20 in leading this process, would -- and the work

21 that he's been doing with the Centre for

22 Health Information, they would have as a team

23 worked through these issues around, you know,

24 the contact information, as this release

25 further comments on in a moment around the

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1 number of people who we have no record of

2 contact being made, that kind of detail would

3 have been dealt with with Robert and the

4 officials. What I would have gotten would

5 have been a reconciled number at the end of

6 the day, which was what was contained in the

7 release when it was eventually done on

8 February 22nd. What went on in the background

9 to get to that particular point and the kind

10 of dialogue that may have occurred, I wouldn't

11 have been a part of that.

12 CHAYTOR, Q.C.:

13 Q. Okay. 0258, please, and again this is an

14 exchange between Ms. Pilgrim and Mr. Thompson,

15 and it appears to be a discussion again around

16 what's going to happen the next day. The

17 first paragraph, Mr. Thompson writes to Ms.

18 Pilgrim, "Nevertheless, the database includes

19 some key findings that it is appropriate to

20 make public as the database is being handed

21 over to the Commission. One of those key

22 results is the change rate. This is the most

23 technically complex of the presentation and it

24 goes on with that from there and he says,

25 "Then we present the change rate for ER

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1 negative and ER/PR negative showing how,
 2 depending on the definition and approach, that
 3 can be calculated as anywhere between 20 to 45
 4 percent. We do not take a position on which
 5 is the right calculation. The media may not
 6 be satisfied with such diverse rates, but we
 7 will simply say it's up to the Commission to
 8 sort out how they believe the data should be
 9 presented", and then the next paragraph, "On
 10 no contact, our core message is that there are
 11 34 patients [subject to change] who were never
 12 contacted or not sure were contacted about
 13 retesting. We will point out that none of
 14 these people had change results, according to
 15 our definitions. If asked about treatment
 16 change, we will say the database does not
 17 evaluate treatment change, that is an issue
 18 for the Commission. We may be asked why these
 19 people were not contacted. We will say we
 20 don't know the reason for each case, but there
 21 are a number of these cases because they were
 22 "no change", that Eastern Health had made a
 23 decision "would not be contacted". The
 24 Government's position is that all cases should
 25 be contacted and we have asked the RHA's to

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1 make these contacts. We will ensure it's
 2 understood that none of these results,
 3 according to our criteria, were conversions",
 4 and he goes on to say, "I'm sure you can have
 5 the Minister's speaking notes". So my
 6 question on this, Minister, is whether or not
 7 any or all of this information was brought to
 8 your attention as to what would be said and
 9 what wouldn't be said?
 10 MR. WISEMAN:
 11 A. There is a presentation of a -- there was a
 12 technical briefing that morning before I did
 13 my press conference and Robert Thompson would
 14 have reviewed with me the content of his
 15 presentation that he was going to do. So that
 16 would have been shared with me.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So this part here where it says, "We
 19 don't know the reason for each case, but there
 20 are a number of these cases because they were
 21 "no change", that Eastern Health had made a
 22 decision would not be contacted", were you
 23 aware of that?
 24 MR. WISEMAN:
 25 A. No. I mean, I -- to answer your question

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1 around why people weren't contacted, I wasn't
 2 in a position to answer that, so, I mean, the
 3 -- but I wasn't about to provide an
 4 explanation of why they weren't contacted
 5 because I don't know. When I did my press
 6 conference, I was reporting that there was 35
 7 patients who there was no documentation to
 8 note that they had been contacted, so I was
 9 reporting as of that day there was 35 people
 10 who had not been contacted. I wasn't in a
 11 position to comment as to why they weren't or
 12 to justify why they weren't because I really
 13 didn't know.
 14 CHAYTOR, Q.C.:
 15 Q. But the idea that Eastern Health made a
 16 conscious decision not to contact certain
 17 people who didn't have a change, is that --
 18 MR. WISEMAN:
 19 A. No, I mean, I --
 20 CHAYTOR, Q.C.:
 21 Q. Were you aware of that?
 22 MR. WISEMAN:
 23 A. No.
 24 CHAYTOR, Q.C.:
 25 Q. Or aware of the fact that Robert is saying

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1 this here?
 2 MR. WISEMAN:
 3 A. A little later on the -- you know, I became
 4 aware that there was -- as Robert was
 5 continuing to do some of his work, you know,
 6 that there was a focus on those that had
 7 change in the process, and I think some of the
 8 explanations that have been since provided by
 9 Eastern as to what might have happened here,
 10 one of the comments that have surfaced has
 11 been that they were focusing on those
 12 individuals who had changes, and as a result
 13 of that, because of that focus, some people
 14 who didn't have change may have gotten missed,
 15 but that's a theory now that's being offered
 16 as being a possible reason for not contacting
 17 people back in 2005.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and if we just scroll down -- well, Ms.
 20 Pilgrim's response to that e-mail is "Thanks,
 21 Robert", so there doesn't seem to be an issue
 22 raised with how he intends to frame the
 23 messages that he's indicated there, and on the
 24 bottom then of the page there's an earlier e-
 25 mail, however, from Ms. Pilgrim to Mr.

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1 Thompson, February 21st, 2008, and in this
 2 she's indicating she's left a message for him
 3 and she has, "I'm asking for the following",
 4 and the second point is, "Also I understand
 5 that Debbie, etc, are working on the "no
 6 contact, don't know if contact" list. I would
 7 like to know what the outcome of that is as
 8 this will definitely be an area for potential
 9 questions for me". So you're not able to shed
 10 any light on what that issue was?
 11 MR. WISEMAN:
 12 A. No.
 13 CHAYTOR, Q.C.:
 14 Q. If we could have 0244, please, and this, I
 15 believe, Minister, is the draft, February
 16 19th, 2008, technical briefing ER/PR database?
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. So I take it that there was then a PowerPoint
 21 presentation made to the media that day, is
 22 that what happened?
 23 MR. WISEMAN:
 24 A. Yes, it would have been, yes.
 25 CHAYTOR, Q.C.:

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1 Q. If we could have page seven of that exhibit,
 2 please, and this talks about the number of
 3 deceased ER negative patients and states that
 4 -- I take it that's, "November 23rd, 2006, and
 5 May 17th, 2007, Eastern Health reported 176
 6 deceased out of the 939 patients who went to
 7 Mount Sinai. "Did not use", so Eastern Health
 8 did not use mortality database to identify the
 9 deceased patients. "The database includes 294
 10 patients who were deceased as of that date",
 11 November 23rd, 2006, "and then 323 one year
 12 later". So I take it part of this technical
 13 briefing was to identify an update in the
 14 deceased numbers and to point out how it could
 15 be that Eastern Health did not have the
 16 correct numbers?
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. What's your understanding about Eastern Health
 21 not having use the mortality database?
 22 MR. WISEMAN:
 23 A. I understood that they had--because the
 24 mortality database is a provincial database--
 25 and I understood that they had, in the

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1 information they were reporting earlier, the
 2 176 was based on information contained within
 3 Eastern Health itself and did not reflect the
 4 provincial database.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. It says "in May 2007 Eastern committed
 7 to test all deceased and make results
 8 available". Do you know how that came about?
 9 Is that something you directed Eastern Health
 10 to do?
 11 MR. WISEMAN:
 12 A. I mean, it was a discussion that we had had
 13 back then in May 2007 as to why they weren't
 14 going to be done and that--I don't know if I'd
 15 use the word "direct" them to. I expressed
 16 the view that they should all be done.
 17 CHAYTOR, Q.C.:
 18 Q. The next page, the third bullet says
 19 "uncertainly about the total for 1998", do you
 20 know what that's about? Why is there
 21 uncertainly about the total for 1998?
 22 MR. WISEMAN:
 23 A. I can't recall now what Mr. Thompson would
 24 have meant by that.
 25 CHAYTOR, Q.C.:

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1 Q. Has that been clarified? Is there still
 2 uncertainty about -
 3 MR. WISEMAN:
 4 A. I'm not certain; not sure what he would have
 5 meant by that.
 6 CHAYTOR, Q.C.:
 7 Q. You don't know. So we'll ask Mr. Thompson
 8 about that.
 9 MR. WISEMAN:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. If we could have page 21 in the document,
 13 please. And Mr. Wiseman, the announcement in
 14 terms of the funding for information
 15 management, I take it that was just for
 16 Eastern Health, not for all four authorities?
 17 MR. WISEMAN:
 18 A. In the announcement there's a block of money
 19 for Eastern and a 2.1 in Eastern's system.
 20 CHAYTOR, Q.C.:
 21 Q. Yes, so it's just Eastern Health, -
 22 MR. WISEMAN:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. - not the others.

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1 MR. WISEMAN:
 2 A. There's some money in there for the others -
 3 CHAYTOR, Q.C.:
 4 Q. Oh, okay.
 5 MR. WISEMAN:
 6 A. - to start a process to do it, but the biggest
 7 block is for Eastern.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. "Method of initial contact with
 10 patients" is what's indicated at the top of
 11 this slide. And we'll see three--before I get
 12 to the shaded one, the second one is "patient
 13 was contacted before results are back" and
 14 it's indicated to be 267 or 26 percent of the
 15 patients. "Patient was contacted after the
 16 results were back", 168 or 16.3 percent.
 17 "Patient was deceased before contact was
 18 made", 233 patients or 22.7 percent. "Unable
 19 to contact", 24 or 2.3 percent. "No contact
 20 made", 53 or 5.2 percent. I think that says
 21 "unsure if contact was made", 9 and that's 0.9
 22 percent of the group. So, as of the date,
 23 February 19, 2007, when this is getting
 24 prepared for your press conference, this is
 25 indicating there were still 24 people that

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1 they had been unable to make to contact with,
 2 53 who no contact was made and 9 where they're
 3 unsure if contact had been made. Those were
 4 the numbers as of when this was prepared.
 5 MR. WISEMAN:
 6 A. Uh-hm.
 7 CHAYTOR, Q.C.:
 8 Q. And we have a second draft at P-0253, page 6,
 9 please. Mr. Wiseman, this is also indicated
 10 to be a "technical briefing, ER/PR database,
 11 February 19, 2008", also in draft. And there
 12 are some differences in the numbers.
 13 MR. WISEMAN:
 14 A. Uh-hm.
 15 CHAYTOR, Q.C.:
 16 Q. If I could just take you then to--although it
 17 appears to be closely similar. Page 20, I
 18 believe it is, of the exhibit. Under
 19 "Communications", 49 people were not contacted
 20 by a health authority or it is uncertain if
 21 they were contact; 38 of the 49 are living; 6
 22 of 38 had changed results, ER negative to
 23 positive. And the RHAS have been asked to
 24 contact these people ASAP with priority on the
 25 6 who had changed results. So, this is now

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1 almost two months ago. Do you know the
 2 current status? Whether or not all of those
 3 people have now been contacted?
 4 MR. WISEMAN:
 5 A. As I understand it, I reported in November,
 6 the release document--not sure what tab that's
 7 under--but in that release I had indicated at
 8 that time there was 35 people that had not
 9 been--living--had not been contacted. One of
 10 those individuals, as a result of a--into
 11 this--have some additional pathology work
 12 concluded, got concluded on Friday of last
 13 week. And as I understand it, the oncologists
 14 involved will be meeting with that patient
 15 this week to review the results of that
 16 analysis.
 17 CHAYTOR, Q.C.:
 18 Q. So, when did you last ask about this issue?
 19 MR. WISEMAN:
 20 A. The most recent discussion I had about it was
 21 over the weekend. Probably the last week or
 22 two, I've had several discussions with Mr.
 23 Thompson around how the information was
 24 actually--the progress of the work towards
 25 those 35. You know, there's some additional

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1 information that's--as a result of work over
 2 the course of the last month or so, there's
 3 been some additional findings as well, with
 4 respect contact. So, as that work by Mr.
 5 Thompson and his group has been unfolding, you
 6 know, him and I have had numerous discussions
 7 over the last week or two around this piece.
 8 And so the knowledge that the pathology work
 9 had been concluded on the last of that 35 came
 10 to my attention this weekend.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And the last slide here says that "each
 13 RHA has been given records of the patients not
 14 contacted to immediately ensure contact is
 15 made and priority, of course, on people with
 16 changed results".
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So, from what I'm understanding from
 21 what you're saying, there are still people who
 22 have not been contacted?
 23 MR. WISEMAN:
 24 A. There is one person--of that 35 here, there's
 25 one, who I understand, that is remaining--that

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1 is left to be contacted and arrangements have
 2 been made for the oncologist to meet with that
 3 person this week to do that. And that came
 4 about as a result of the analysis that needed
 5 to be done of that case wasn't concluded until
 6 Friday past.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So, there's only one--to your
 9 knowledge, out of--and at this point in time,
 10 it said 49, but at some point, that was
 11 reduced to 35.
 12 MR. WISEMAN:
 13 A. Well, I think the distinction being there were
 14 44 patients, nine of which were deceased, 35
 15 were living.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. So, out of those 35, there's now only
 18 one remaining?
 19 MR. WISEMAN:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. If we could have O-0256 please? And
 23 Mr. Wiseman, this is an e-mail from Tara
 24 Furlong to Robert Thompson copied to Glenda
 25 Power. Who is Tara Furlong?

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1 MR. WISEMAN:
 2 A. She's the assistant to Glenda Power in
 3 Communications branch in the Department of
 4 Health and Community Services.
 5 CHAYTOR, Q.C.:
 6 Q. Okay, thank you. February 21, 2008, 5:14
 7 p.m., "a Q & A is attached for your review and
 8 feedback". What was the purpose of those Q &
 9 A's?
 10 MR. WISEMAN:
 11 A. They would have been--it's normal practice
 12 when there is a press conference like this to
 13 provide some question and answers the same way
 14 as you may have seen them in the briefing
 15 notes earlier.
 16 CHAYTOR, Q.C.:
 17 Q. Yes. One of the questions that she identifies
 18 as being something that may come up as a
 19 question for you, I guess in giving the press
 20 conference, it says, "Minister, when were you
 21 made aware of the increases in the number of
 22 patients who are deceased"? So, when was this
 23 brought to your attention?
 24 MR. WISEMAN:
 25 A. Just maybe, I don't know, maybe a week or two

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1 before this press conference. Yeah, maybe a
 2 week or two before this.
 3 CHAYTOR, Q.C.:
 4 Q. Under the question regarding the fact, number
 5 three, she says, she anticipates a question
 6 along the lines of "it seems incredible that
 7 over 30 people who should have been contacted
 8 regarding their test results were not. How
 9 did this happen"? And the proposed answer,
 10 "that's a difficult question to answer. I
 11 suspect it was most likely due to the
 12 inadequacies in the record keeping for ER/Pr
 13 retesting. I will point out that while we
 14 cannot say that 34 of these patients were not
 15 contacted by regional health authority. It is
 16 possible they were called by their physician".
 17 Mr. Wiseman, do you know -
 18 THE COMMISSIONER:
 19 Q. (Inaudible).
 20 CHAYTOR, Q.C.:
 21 Q. I'm sorry, did I?
 22 THE COMMISSIONER:
 23 Q. "I will point out that while we can say 34 of
 24 these patients were not contacted".
 25 CHAYTOR, Q.C.:

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1 Q. I'm sorry, you're right, yes. "We can say",
 2 sorry. "It is possible they were called by
 3 their physician". Do you know, in the follow
 4 up with the patients, whether or not that
 5 proved to be the case?
 6 MR. WISEMAN:
 7 A. I couldn't tell you, I don't know.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. And is somebody tracking that, whether
 10 or not the patients, in fact, had been
 11 contacted through some other means?
 12 MR. WISEMAN:
 13 A. I wouldn't know if the--as the contacts are
 14 being made, whether the responses are being
 15 recorded or not, I really wouldn't know. It's
 16 a question you may want to ask Mr. Thompson,
 17 but I'm not aware.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And when I scroll down through these
 20 numbers or sorry, these questions, Mr.
 21 Wiseman, I don't see the question that we
 22 ultimately know that you were asked at the
 23 press conference. The question in terms of
 24 you're releasing numbers of deceased and--why
 25 don't you tell us about that. What happened

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1 in terms of what question was asked repeatedly
 2 of you at the press conference?
 3 MR. WISEMAN:
 4 A. During that there was a question that came up
 5 numerous times by several different reporters
 6 and that was the question around the, of those
 7 that are deceased, how many of those would
 8 have had a change in their test result? And
 9 that's a piece of information I didn't have.
 10 It's a piece of information that hadn't been
 11 gleaned from that analysis up to that
 12 particular point. And subsequent to that we,
 13 Robert and his group, did the further analysis
 14 and actually came up with that number and then
 15 that became the subject of a press release
 16 that went out on March 18.
 17 CHAYTOR, Q.C.:
 18 Q. Yes.
 19 MR. WISEMAN:
 20 A. And at that time we provided the--and
 21 indicated that of the 322 people that were
 22 deceased, there were 108 that had a change in
 23 their test results. We also, at that time,
 24 confirmed as well, a number of those that--of
 25 the 691 that were living, there was a change

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1 for 275 of those. So, that information went
 2 out in a press release on March 18.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. It was 18, not March 14, was it?
 5 MR. WISEMAN:
 6 A. March 18, yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So, I take it, looking at that Q & A's
 9 which were prepared for you, that there was no
 10 anticipation, even though you're releasing the
 11 numbers, the full numbers for the deceased or
 12 what was understood at that point in time to
 13 be the numbers of total deceased patients, and
 14 contact information for the families, there
 15 was no anticipation that a question which
 16 might come to mind would be, well, how many of
 17 the deceased had a change in result? That
 18 wasn't anticipate?
 19 MR. WISEMAN:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. Now, it certainly was anticipated
 23 though previously by your department. We've
 24 looked at briefing notes back--one of your
 25 first briefing notes--back May 17, 2007, had

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1 one of the anticipated question at that point
 2 in time being, "Why has Eastern Health not
 3 released the test results for the 176
 4 patients"--as it was then or thought to be--
 5 "who have died since the original testing"?
 6 So, back in May of 2007 it was certainly an
 7 anticipated question.
 8 MR. WISEMAN:
 9 A. Right.
 10 CHAYTOR, Q.C.:
 11 Q. But leading into this, it was not anticipated
 12 that that would be asked?
 13 MR. WISEMAN:
 14 A. (No audible response).
 15 CHAYTOR, Q.C.:
 16 Q. And, in fact, when we think back to the CBC
 17 story of May 15, 2007, I'm going to suggest to
 18 you that one of the focusses was, at that
 19 point in time, the stories at that point in
 20 time, was why Eastern Health had not released
 21 the results on the deceased. And we've heard
 22 Minister or Mr. Osborne talk about that being
 23 a key concern of him regarding the deceased
 24 and getting the full numbers of deceased back
 25 as early as November 23, 2006. He was

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1 certainly posing the question as was he said
 2 his assistant at that time, Darrell Hynes,
 3 posing the question of how many deceased would
 4 have had change in results and the importance
 5 of that to factor into the overall numbers.
 6 But if we come forward then to February 2008,
 7 that was not a question that was anticipated -
 8 MR. WISEMAN:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. - going into this new conference.
 12 MR. WISEMAN:
 13 A. And when we went into it, we didn't have the
 14 answer and, you know, as I just pointed out to
 15 you, that when the press conference was over,
 16 it was a question that had been pursued by a
 17 couple of different reporters. And so, Mr.
 18 Thompson then continued to drill down and to
 19 get the detail and we've since provided it.
 20 CHAYTOR, Q.C.:
 21 Q. And Mr. Wiseman, with the database and maybe
 22 you're not the right person to ask this of and
 23 if not, tell me and I'll ask Mr. Thompson or
 24 others--with the database, how difficult is it
 25 to extract that information from the database?

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1 MR. WISEMAN:
 2 A. I have no idea. That's--I mean,
 3 fundamentally, the workings of the database
 4 and how it's constructed and the information
 5 is manipulated to draw certain reports from
 6 it, I have no technical expertise at all and I
 7 lend nothing to that conversation. What I
 8 share with you is the results that came from
 9 that analysis that's being done by Robert
 10 Thompson and his team. And so we've had the
 11 information I supplied in November; I had the
 12 information I supplied in December; the press
 13 release that went out in March of '08, March
 14 18. And today, as we speak, there's some
 15 additional information that we've gleamed from
 16 that that's available now as well, that
 17 provides further insight into some numbers
 18 with respect to how some individuals may have
 19 been impacted.
 20 CHAYTOR, Q.C.:
 21 Q. Yes.
 22 THE COMMISSIONER:
 23 Q. Ms. Chaytor, we've run five minutes past the
 24 usual break time. Could we break now or are
 25 you in a middle of a line of questioning that

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1 you want to complete?
 2 CHAYTOR, Q.C.:
 3 Q. Perhaps I could just finish up, if you don't
 4 mind, on this particular press conference and
 5 then we'll have that out of the way?
 6 THE COMMISSIONER:
 7 Q. Okay.
 8 CHAYTOR, Q.C.:
 9 Q. If we could have 0262, please? And this is an
 10 e-mail exchange with Melissa Sullivan, from
 11 Melissa to Robert Thompson. Who is Melissa
 12 Sullivan?
 13 MR. WISEMAN:
 14 A. I think she's one of the staff who works with
 15 Mr. Thompson in the task force he was involved
 16 with.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. And this is February 22, 2008 at 11:40
 19 a.m.
 20 MR. WISEMAN:
 21 A. That would have followed the briefing and the
 22 press conference.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. So, immediately the briefing then, we
 25 scroll down, slide communications, did the

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1 results of--I take it she means the 9 who were
 2 deceased--after the results were sent to Mt.
 3 Sinai convert, we have not performed that
 4 analysis. Question, are these the final
 5 numbers? We are highly confident in the
 6 integrity of our analysis, however we can be
 7 certain"--"we cannot"--I'm doing it again--"we
 8 cannot be certain that it is the final
 9 database. Question, what is the conversion
 10 rate of deceased compared to the living? We
 11 have not performed this analysis. The
 12 Commission will determine what the threshold
 13 cut off to us and may perform this
 14 calculation". So, this is now after, you're
 15 saying, the technical briefing?
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And -
 20 MR. WISEMAN:
 21 A. Just looking at that from--the subject says
 22 "Questions from technical briefing" and then
 23 the date and the time on it would suggest that
 24 that's what's happened here.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And so after the technical briefing, it
 2 was still not contemplated that the conversion
 3 rate of the deceased compared to the living,
 4 would that figure be looked at?
 5 MR. WISEMAN:
 6 A. No, I think if you read this--as I'm reading
 7 this e-mail here, what it appears to be, that
 8 she's sending an e-mail to Robert as issues
 9 grew--questions from the technical briefing
 10 and this is her response to those questions.
 11 And she's providing that to Robert at 11:40,
 12 which, as I read this, is she was either
 13 present or knew of the nature of discussion at
 14 the technical briefing or the press conference
 15 and she was now responding to those issues.
 16 CHAYTOR, Q.C.:
 17 Q. Okay.
 18 MR. WISEMAN:
 19 A. That's my take of the -
 20 CHAYTOR, Q.C.:
 21 Q. Okay. And 0264 please. And again, it's
 22 Melissa Sullivan, same date, it's a little bit
 23 later in the day, 12:49 p.m. to Robert
 24 Thompson and Rolf Pritchard and Debbie Gregory
 25 or Deborah Gregory, are copied on this. And

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1 the subject is "Minister briefing questions,
 2 deceased and false negatives. Of the 322
 3 deceased, how many were false negatives"? The
 4 answer, "we have not performed analysis on
 5 change rates for living and deceased. Is it
 6 essential to know this number? How many
 7 people died with a false negative result"?
 8 And question, "why was this analysis not
 9 conducted"? So, again, this is being prepared
 10 after the -
 11 MR. WISEMAN:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And is it intended that it's a summary of the
 15 questions that were posed, is that what this
 16 is?
 17 MR. WISEMAN:
 18 A. I don't know. This is an exchange between
 19 Melissa Sullivan and Robert Thompson. So, I
 20 don't know what it would have intended to do.
 21 CHAYTOR, Q.C.:
 22 Q. Did you, after the press conference direct
 23 that the number be obtained, the number of
 24 deceased who had changed results?
 25 MR. WISEMAN:

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1 A. Again, the issue, the use of the word
 2 "direct", I mean, Robert and I would have had
 3 a conversation -
 4 CHAYTOR, Q.C.:
 5 Q. Or request.
 6 MR. WISEMAN:
 7 A. Yeah, and this--both would have recognized
 8 that we needed to--this is a question,
 9 important question, we didn't have the answer
 10 and it was reasonable that we provide it.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And did you have that conversation with
 13 Mr. Thompson immediately after this press
 14 conference?
 15 MR. WISEMAN:
 16 A. It would have been some time after that, yes.
 17 I mean, I suspect it would have been
 18 immediately after because we would have, kind
 19 of de-briefed on what had just unfolded with--
 20 because he had done this technical briefing
 21 before the press conference. And so him and I
 22 would have had a brief chat after that.
 23 CHAYTOR, Q.C.:
 24 Q. Thank you. This is a good point please.
 25 THE COMMISSIONER:

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1 Q. All right then, we'll break for lunch. And
 2 since we're a little late, we'll make it 2:10.
 3 Thank you.
 4 (BREAK FOR LUNCH)
 5 THE COMMISSIONER:
 6 Q. Ms. Chaytor.
 7 CHAYTOR, Q.C.:
 8 Q. Thank you. Good afternoon, Mr. Wiseman.
 9 MR. WISEMAN:
 10 A. Good afternoon.
 11 CHAYTOR, Q.C.:
 12 Q. Mr. Wiseman, I had been asking you questions
 13 when we left about the February 22nd, 2008,
 14 press conference, and a number of the
 15 questions and e-mail exchanges, of course,
 16 involved Mr. Thompson around that press
 17 conference. In that situation, the database
 18 and Mr. Thompson's role in helping assemble
 19 that information, does Mr. Thompson report to
 20 you?
 21 MR. WISEMAN:
 22 A. Mr. Thompson is reporting -- as Secretary to
 23 the Cabinet, he reports to the Cabinet
 24 Secretariat, but in terms of the piece of work
 25 that he's doing, obviously it relates to the

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1 Department of Health and Community Services in
 2 a file that we're very obviously actively
 3 engaged, so what he's been doing is he's been
 4 making sure that he keeps me apprised of what
 5 progress he's making in that database. In
 6 terms of his reporting relationship as
 7 Secretary to Cabinet, it would be with the
 8 Executive Council.
 9 CHAYTOR, Q.C.:
 10 Q. And who's that?
 11 MR. WISEMAN:
 12 A. The Clerk of the Executive Council would be
 13 Gary Norris, and I'm not sure what the
 14 formality in terms of the reporting
 15 relationship, and then by extension through
 16 Cabinet, but as I would see it, it would be
 17 with the Executive Council.
 18 CHAYTOR, Q.C.:
 19 Q. And who would -- who would he be reporting to
 20 at Cabinet?
 21 MR. WISEMAN:
 22 A. That's what I'm not certain of.
 23 CHAYTOR, Q.C.:
 24 Q. Okay.
 25 MR. WISEMAN:

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1 A. Whether it's the Premier or Executive Council,
 2 I'm not really certain what that reporting
 3 relationship would be.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. Well, we'll take that up then with Mr.
 6 Thompson.
 7 MR. WISEMAN:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. I'd like to move on then to the March
 11 18th, 2008, press release, and Mr. Wiseman,
 12 what was the purpose of that press release?
 13 MR. WISEMAN:
 14 A. Fundamentally we were responding to the
 15 questions that had been raised in the February
 16 22nd media discussion around the number of
 17 deceased who had their results change on the
 18 second go-around.
 19 CHAYTOR, Q.C.:
 20 Q. Yes, and if we could look, please, at P-0269.
 21 So this was to answer the question that came
 22 up about the deceased --
 23 MR. WISEMAN:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Primarily the deceased who had a change in
 2 their results?
 3 MR. WISEMAN:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. Now at P-029, this is a draft of the release,
 7 and towards the -- sorry, it's just an e-mail
 8 communication the first page. Here's the
 9 draft on page two of P-0269.
 10 MR. WISEMAN:
 11 A. Uh-hm.
 12 THE COMMISSIONER:
 13 Q. I'm sorry, what was the date of this press
 14 release again? The 18th?
 15 CHAYTOR, Q.C.:
 16 Q. The 18th, but this draft is dated March 14th,
 17 2008.
 18 THE COMMISSIONER:
 19 Q. Thank you.
 20 CHAYTOR, Q.C.:
 21 Q. I think that's why earlier this morning I was
 22 referring to the 14th thinking that it was the
 23 14th. So this is Minister provides additional
 24 information on ER/PR database, and you come
 25 down into the second paragraph, it says, "Of

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1 the 1013 patients whose results were sent for
 2 retesting, 322 are deceased and 691 are
 3 living. This information was provided in the
 4 last update. Additional analysis show the
 5 number of deceased patients whose test results
 6 changed is 108, and the number of living
 7 patients whose test results changed is 275".
 8 So these are the new numbers which were
 9 provided?
 10 MR. WISEMAN:
 11 A. Yes, and that would have been contained in the
 12 release.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and this I believe is a draft of the
 15 release. At this particular time when the
 16 draft was being done, March 14th, 2008, it
 17 also was contemplated in the bottom paragraph
 18 that there would be information released
 19 regarding patients who were initially
 20 contacted and did not receive a second call.
 21 It says here, "At the conclusion of his work
 22 on the ER/PR database project, NLCHI also
 23 provided additional information which
 24 indicates that 16 of the 691 living patients
 25 who were initially contacted by the retesting

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1 process may not have received a follow up call
 2 with their second results". Minister, were
 3 you aware that at this particular point in
 4 time there was a plan to release information
 5 regarding those patients who were initially
 6 contacted, but then did not receive a second
 7 phone call?
 8 MR. WISEMAN:
 9 A. I became aware of this, yes, in and around
 10 this time, which is several days before the
 11 release was actually done. What had happened
 12 here is in the Centre drilling down a little
 13 further to get an answer to the question
 14 around the number of deceased who had a test
 15 result change, they -- in doing that further
 16 work, they became aware that there was some
 17 who had they had originally captured in their
 18 database as having had an initial call, but
 19 not a subsequent call when the test results
 20 came back and that's where this figure comes
 21 from. We've subsequently learned there was 15
 22 rather than 16.
 23 CHAYTOR, Q.C.:
 24 Q. So these were patients who were initially
 25 called to advise them retesting was taking

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1 place, but then there was no follow up phone
 2 call with their results?
 3 MR. WISEMAN:
 4 A. No, and so what had happened, though, in
 5 addition to that there was a number that --
 6 the 16 here, but it later got reconciled to be
 7 15, but in addition to that, and there were a
 8 number of these individuals who -- the result
 9 that came back -- there's a term called DCIS,
 10 which is an acronym to describe a non-evasive
 11 form of cancer, and there was a group of these
 12 15 who were in that category that required
 13 some additional analysis by pathology.
 14 CHAYTOR, Q.C.:
 15 Q. And who made that determination?
 16 MR. WISEMAN:
 17 A. When the -- this would have been the clinical
 18 people at Eastern Health.
 19 CHAYTOR, Q.C.:
 20 Q. Okay.
 21 MR. WISEMAN:
 22 A. So Mr. Thompson would have been in discussion
 23 with Eastern Health with respect to these, and
 24 so the understanding was that some of these
 25 needed to have additional analysis by

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1 pathology, and to determine what might be the
 2 appropriate information to be communicated
 3 when the contact was actually made. So they
 4 had asked that we would at that moment not
 5 provide the reference to the 15 in this
 6 release, but allow that other piece of work to
 7 be done and when that got concluded, then that
 8 information would be available for release.
 9 That analysis needed to be done initially.
 10 CHAYTOR, Q.C.:
 11 Q. So Eastern Health asked that this number 16,
 12 or 15 as it turns out, not be released on
 13 March 18th, 2008?
 14 MR. WISEMAN:
 15 A. At this point in time.
 16 CHAYTOR, Q.C.:
 17 Q. Were they all DCIS patients?
 18 MR. WISEMAN:
 19 A. No, there was some of them that weren't. Some
 20 of them weren't and some of them were. I
 21 think at the time there may have been six, if
 22 I'm not mistaken, six of them were DCIS and
 23 the others weren't, but there had been no
 24 change in their test results and the intent
 25 was to do -- rather than release it as part of

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1 the release on March 15th, or March 18th
 2 rather, to allow the work to be done on the
 3 DCIS patients and then continue with the
 4 contact for the remaining ones, but then when
 5 we provided the next update, to be able to
 6 provide that full picture of the 15 that were
 7 discovered during this period of time.
 8 CHAYTOR, Q.C.:
 9 Q. So some of those patients weren't waiting for
 10 any further investigation of their pathology.
 11 There were some that were DCIS, but not all
 12 the 15.
 13 MR. WISEMAN:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. But Eastern Health asked that you hold off on
 17 making any announcement with respect to those
 18 people?
 19 MR. WISEMAN:
 20 A. Well, until we had a more definitive -- the
 21 thinking was that until there was a more
 22 definitive understanding of what would be
 23 communicated to the DCIS and that analysis got
 24 done because rather than -- you know, because
 25 what we were about to release here then was

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1 that we've now become aware that there was
 2 some individuals who had initial contact, but
 3 didn't have a follow up contact. So the
 4 judgment call was to allow the DCIS analysis
 5 to be done by the pathologist, to continue to
 6 follow through and make contact with the
 7 remaining nine, and then when the DCIS
 8 analysis got done, as they got done then
 9 contact would be made with them, and then at a
 10 future update we will provide the commentary
 11 that -- which is what we did today, actually,
 12 was to provide a commentary today in our
 13 document today that identified that during the
 14 March 18th press release, we had knowledge of
 15 these 15, but did that further analysis, but
 16 in the interim made contact with the nine, did
 17 the analysis of the six, which brings us to
 18 where we are today.
 19 CHAYTOR, Q.C.:
 20 Q. So rather than announce on March 18th, 2008,
 21 that there were nine people -- excluding out
 22 the DCIS who needed further investigation
 23 according to Eastern Health and their
 24 pathology, rather than announce that there
 25 were the nine, they asked that you hold off on

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1 announcing any numbers around those who had
 2 received an initial call, but had not had a
 3 follow up call?
 4 MR. WISEMAN:
 5 A. And so the next public disclosure -- patient
 6 communication did take place, but the public
 7 disclosure would not take place until we
 8 finished all 15 because all 15 of them were in
 9 the same category, which is they all had an
 10 initial call, but didn't have a subsequent
 11 second call.
 12 CHAYTOR, Q.C.:
 13 Q. Uh-hm.
 14 MR. WISEMAN:
 15 A. So when we make the next public commentary,
 16 which is what we did today, there were 15 in
 17 that grouping. They had an initial call and
 18 now they have now had their second call.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So I take it, in fact, this doesn't end
 21 up in the ultimate release that goes on, so
 22 the Department agreed not to refer to those 15
 23 patients back on March 18th?
 24 MR. WISEMAN:
 25 A. Yeah.

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1 CHAYTOR, Q.C.:
 2 Q. Okay.
 3 THE COMMISSIONER:
 4 Q. So except for the one person you mentioned
 5 today who has a meeting next week, I can
 6 conclude 14 have had contact -- 14 of those 15
 7 have had communication from Eastern Health?
 8 MR. WISEMAN:
 9 A. Just so that I can clarify on that particular
 10 point, this morning in my comment about the
 11 one that's being contacted this week, I
 12 apologize if I've confused you because it is a
 13 little bit of a confusing trail, the one that
 14 I referred to today is one of 35 that was
 15 referenced in the February 22nd. So on
 16 February 22nd, I referenced that there were
 17 35. The one that I made comment earlier today
 18 that was being followed up this week as we
 19 speak is one of that group of 35. The group
 20 of 15 that I'm referring to here now, they
 21 have all been contacted as of now.
 22 CHAYTOR, Q.C.:
 23 Q. Including the DCIS people?
 24 MR. WISEMAN:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. So it was 35 plus an additional 15?
 3 MR. WISEMAN:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. So 50 people.
 7 MR. WISEMAN:
 8 A. The -- exactly.
 9 CHAYTOR, Q.C.:
 10 Q. But the other 15 had had an original phone
 11 call advising that retesting was taking place,
 12 but no follow up call as to their results?
 13 MR. WISEMAN:
 14 A. Right, and the original 35 referenced on
 15 February 22nd, we had no record of any call at
 16 the beginning or end of the retesting process.
 17 CHAYTOR, Q.C.:
 18 Q. No call whatsoever?
 19 MR. WISEMAN:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. So it was 35 who had no contact whatsoever?
 23 MR. WISEMAN:
 24 A. Right.
 25 CHAYTOR, Q.C.:

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1 Q. And an additional 15 who had the first phone
 2 call, but no second?
 3 MR. WISEMAN:
 4 A. Exactly.
 5 CHAYTOR, Q.C.:
 6 Q. And what you're telling us, the status today
 7 is that there is one person who has still not
 8 been contacted?
 9 MR. WISEMAN:
 10 A. Of that 35 original group.
 11 CHAYTOR, Q.C.:
 12 Q. Well, of any of them.
 13 MR. WISEMAN:
 14 A. Yes, exactly, okay.
 15 CHAYTOR, Q.C.:
 16 Q. Is that right?
 17 MR. WISEMAN:
 18 A. Yeah. So rather than saying one of 15 or one
 19 of 35 because I -- if you want to group them
 20 together, we have one of 50 if you want to use
 21 a total number.
 22 CHAYTOR, Q.C.:
 23 Q. In terms of releasing -- on March 18th, 2008,
 24 releasing the fact that 15 people had received
 25 an initial call, but not a follow up call,

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1 what difference would that make? How is that
 2 tied to, well, five of them still -- they're
 3 working through some pathology issues to
 4 determine. What difference would it make?
 5 MR. WISEMAN:
 6 A. It probably wouldn't have made a -- it wasn't
 7 a major issue, I suppose, just that the
 8 information would have been -- the intent was
 9 to follow through as soon as it got reconciled
 10 to make it a public disclosure. The critical
 11 issue in terms of the people who were
 12 impacted, which would have been the patients,
 13 they were -- the contact was initiated with
 14 them. So those nine individuals were going to
 15 have their contact and they would be advised
 16 of the results that came back. In terms of
 17 the public disclosure, there was no -- it was,
 18 I guess, a judgment call because the intent
 19 was to, you know, in the short period of time
 20 to be able to make the public disclosure of
 21 that 15 and what characteristics they had,
 22 which is that they had one call and didn't
 23 have a second, and to make that announcement
 24 all at one time. So there were 15 found to be
 25 in that category and now all 15 of them have

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1 had contact done. So that would have been the
 2 public disclosure and that's what we did here
 3 today. Not "here", but that's what we've done
 4 today. So that -- you know, there is nothing
 5 mystical about the rationale or reasoning. It
 6 was just that kind of judgment call at that
 7 moment. The critical piece I want to
 8 emphasize is that the patient contact did
 9 occur.
 10 CHAYTOR, Q.C.:
 11 Q. And the disclosure that was made today, was
 12 there anything else in the disclosure today?
 13 MR. WISEMAN:
 14 A. There was a -- the additional piece of
 15 information in the disclosure today indicating
 16 that there's four individuals whose test
 17 results when they came back the second time
 18 had a reference to "no tumor", and as I
 19 understand that, you may want to get a deeper
 20 understanding from someone else clinically on
 21 this, but what I understand that to be is
 22 where the pathologist on the second reading
 23 would have said that I don't see a tumor -- in
 24 the tissue you've sent me, I don't see a tumor
 25 present. So that needs to be reconciled and

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1 that was something that was just recently
 2 found out in recent days that those four
 3 actually did exist.
 4 CHAYTOR, Q.C.:
 5 Q. I'm sorry, there's how many?
 6 MR. WISEMAN:
 7 A. Four in total.
 8 CHAYTOR, Q.C.:
 9 Q. Four individuals?
 10 MR. WISEMAN:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And Mount Sinai indicated that there was no
 14 tumor?
 15 MR. WISEMAN:
 16 A. There would have been no tumor.
 17 CHAYTOR, Q.C.:
 18 Q. Okay.
 19 MR. WISEMAN:
 20 A. So, as I just said, as I understand that
 21 reference, it's that there was no tumor
 22 present on the tissue sample that was sent.
 23 CHAYTOR, Q.C.:
 24 Q. So today's press release released the fact
 25 that these four people had also been

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1 identified?
 2 MR. WISEMAN:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And has contact been made with those
 6 individuals?
 7 MR. WISEMAN:
 8 A. Not yet, and that's a piece of work not yet
 9 done. So what the -- I guess there's a couple
 10 pieces of information that came out today made
 11 reference to the 35 people that was referenced
 12 in the February 22nd release. It would have
 13 made reference to the 15 people that I just
 14 described that were identified by further
 15 analysis that took place between February and
 16 March 18th, and some work that's been done
 17 subsequent to that. It would have also
 18 identified that there were four patients who
 19 had a "no tumor" result. It would have also
 20 identified 19 individuals who are living, but
 21 all of the attempts to contact them have
 22 failed because of either telephones or mailing
 23 addresses have changed, or some other reason
 24 like that, and as part of the release today,
 25 there was a number of identified strategies to

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1 be able to deal with trying to track down
 2 those individuals, no contact has been made,
 3 some issues around the method of contact used
 4 was also talked about today -- because one of
 5 the things that has happened in the past,
 6 diagnostic results go back to the attending
 7 physician, so some of the contact information
 8 here was done by way of Eastern Health
 9 advising an attending physician that the
 10 results are back and here they were, and the
 11 reliance on the physician to follow through
 12 and make that contact. Just to ensure that
 13 that happened, there's an exercise starting
 14 now to actually -- for Eastern Health
 15 themselves to engage an audit process to
 16 actually go back through all of those and to
 17 ensure that that actually did take place to
 18 close that loop, and also to do some further
 19 analysis of some of their current information
 20 system database to identify some others that
 21 may have gotten lost.
 22 CHAYTOR, Q.C.:
 23 Q. Minister, I apologize, but I'm just looking at
 24 the documents that were handed to me this
 25 morning, and the Executive Summary of April

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1 13th, 2008, of the NLCHI, and I take it this
 2 what your release today would have been based
 3 on.
 4 MR. WISEMAN:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And this is not yet in our records here, but
 8 it -- I'm looking at the Executive Summary.
 9 The first paragraph says, "The database also
 10 identifies four patients whose retest results
 11 were "no tumor", but insufficient information
 12 exists to determine if they have been
 13 contacted".
 14 MR. WISEMAN:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. So that's those four that you just spoke of?
 18 MR. WISEMAN:
 19 A. That's the four I just referenced, yes.
 20 CHAYTOR, Q.C.:
 21 Q. Then it goes on to say, "And 19 living
 22 patients who were unable to be contacted after
 23 numerous attempts"?
 24 MR. WISEMAN:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. So there's 19 others who have yet to be
 3 contacted?
 4 MR. WISEMAN:
 5 A. Yes, and that's the reference I made in terms
 6 of the process now trying to be able to use
 7 the MCP database where we have all -- all
 8 residents of the province got re-registered
 9 last year. We're hoping that we're going to
 10 be able to do some tracking in that system to
 11 be able to identify more current contact
 12 information for those 19.
 13 CHAYTOR, Q.C.:
 14 Q. So there's that 19, there's the one that we
 15 spoke of earlier, and there's the four "no
 16 tumor" patients?
 17 MR. WISEMAN:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. If we could look at P-0275 because we
 21 leave March 18th press release just to
 22 complete the circle. Actually, perhaps it's
 23 0128, page 63.
 24 THE COMMISSIONER:
 25 Q. Exhibit 128?

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1 CHAYTOR, Q.C.:
 2 Q. Exhibit 0128, please, page 63. I believe the
 3 other number 0275 is just another draft. This
 4 is the actual news release, I take it,
 5 Minister, regarding March 18th, 2008, and if
 6 we scroll down, there's no reference -- that
 7 reference that I had showed you in the draft
 8 to patients not contacted --
 9 MR. WISEMAN:
 10 A. Exactly, yes.
 11 CHAYTOR, Q.C.:
 12 Q. That's not there?
 13 MR. WISEMAN:
 14 A. That not in the -- that was in the draft that
 15 we just talked about.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, if we could move on then. Mr. Wiseman,
 18 are you aware of any protection for disclosure
 19 given to briefing notes that are prepared for
 20 and forwarded directly to Cabinet?
 21 MR. WISEMAN:
 22 A. Briefing notes that are prepared for Cabinet?
 23 CHAYTOR, Q.C.:
 24 Q. Yes, that are -- that go directly to Cabinet.
 25 For example, if Eastern Health were to be

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1 involved in drafting a briefing note, and I
 2 say Eastern Health, but any external agency
 3 were involved in drafting a briefing note for
 4 Government and that briefing note was
 5 forwarded directly to Cabinet Secretariat as
 6 opposed to being sent to a Minister, are you
 7 aware of whether or not that briefing note
 8 would be subject to protection from disclosure
 9 as opposed to a briefing note that went
 10 directly to the Department or the Minister?
 11 MR. WISEMAN:
 12 A. I don't know.
 13 CHAYTOR, Q.C.:
 14 Q. You're not aware of any such --
 15 MR. WISEMAN:
 16 A. I don't know.
 17 CHAYTOR, Q.C.:
 18 Q. Have you ever heard that discussed before?
 19 MR. WISEMAN:
 20 A. That's not something I've ever chatted about.
 21 I really don't know.
 22 CHAYTOR, Q.C.:
 23 Q. Can you tell me who might be able to answer
 24 that question?
 25 MR. WISEMAN:

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1 A. Someone -- maybe my Deputy might. Mr.
 2 Thompson, because of his role -- not today
 3 necessarily, because of his experience as
 4 Clerk of the Executive Council may be able to
 5 answer it for you. The current Clerk of the
 6 Executive Council will be able to answer it
 7 for you. I personally don't know.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. You use a Blackberry?
 10 MR. WISEMAN:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Do you ever pen message on your Blackberry?
 14 MR. WISEMAN:
 15 A. Seldom. I may respond to a pen message I
 16 might get, but I don't initiate a lot of pen
 17 messages.
 18 CHAYTOR, Q.C.:
 19 Q. What's the purpose of pen messaging as opposed
 20 to regular messaging?
 21 MR. WISEMAN:
 22 A. I'm not certain to be honest. It's a -- I
 23 understand it's a mechanism that -- the e-mail
 24 system is a Government e-mail system, and the
 25 pen system is not part of the Government e-

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1 mail system, as I understand it, but it's not
 2 something that I'm well versed on.
 3 CHAYTOR, Q.C.:
 4 Q. Have you ever been the recipient of or the
 5 originator of any pen messages with respect to
 6 the ER/PR issue?
 7 MR. WISEMAN:
 8 A. I can say with confidence that I haven't
 9 initiated any because I don't know how the
 10 technology works. I can say that with some
 11 confidence. Whether I've received them, I
 12 wouldn't be able to say with as much
 13 confidence. They come in on my Blackberry,
 14 whether they're e-mail or pen messages. Most
 15 of the pen messages I got in my time with a
 16 Blackberry have been very cryptic, very short,
 17 and tend to come from colleagues looking for a
 18 quick yes or no answer or asking me to make
 19 contact with them. So there's never been --
 20 there's been some e-mails potentially that I
 21 would have gotten.
 22 CHAYTOR, Q.C.:
 23 Q. On the ER/PR issue?
 24 MR. WISEMAN:
 25 A. I may have gotten, but I -- I understand that

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1 some time ago as part of this process here, in
 2 preparation for this process, I authorized or
 3 allowed someone in the Department to search my
 4 e-mail system -- go in on my system and search
 5 it to find out if there was any information
 6 that would have been relevant to disclose to
 7 the Commission, so I assume that got done.
 8 CHAYTOR, Q.C.:
 9 Q. And would that include any that were done by
 10 way of pen messaging?
 11 MR. WISEMAN:
 12 A. I don't -- well, if my understanding of how
 13 the e-mail system works as the Government e-
 14 mail system, I don't know -- I don't know if
 15 the technology allows that to happen. That's
 16 a technical question I don't know, but like I
 17 said to you, my text messages are so
 18 infrequent that I'd be surprised if there was
 19 much there because I seldom --I get very few
 20 text messages.
 21 CHAYTOR, Q.C.:
 22 Q. On the issue of the loss of confidence in Mr.
 23 Tilley, did you indicate to Ms. Dawe and/or
 24 Mr. Tilley your concerns regarding Mr.
 25 Tilley's handling of the ER/PR issue?

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1 MR. WISEMAN:
 2 A. Not explicitly, no.
 3 CHAYTOR, Q.C.:
 4 Q. And why not?
 5 MR. WISEMAN:
 6 A. What I had shared with you last week and my
 7 discussion around a similar type of question
 8 with respect to my discussion with Ms. Dawe
 9 around Mr. Tilley, and my comment to her that
 10 I'd lost confidence in his leadership, it was
 11 a -- it came on the heels of an issue that we
 12 were dealing with on the Burin Peninsula with
 13 respect to radiology services, and we didn't
 14 get into a lengthy discussion about what would
 15 have been the basis for my comments, but some
 16 -- you know, more of a discussion around the
 17 implications for my loss of confidence.
 18 THE COMMISSIONER:
 19 Q. Mr. Wiseman, when you were speaking about this
 20 last week, I had understood that you more or
 21 less had two conversations with Ms. Dawe about
 22 this. The initial one in which she had raised
 23 the question about whether or not you still
 24 had confidence in Mr. Tilley, and you had, I
 25 understood, indicated that at that point you

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1 were content with Mr. Tilley?
 2 MR. WISEMAN:
 3 A. Yes.
 4 THE COMMISSIONER:
 5 Q. And then sometime later when the issue arose
 6 on the Burin Peninsula, your view respecting
 7 Mr. Tilley had changed?
 8 MR. WISEMAN:
 9 A. Yes, you're -
 10 THE COMMISSIONER:
 11 Q. And I further understood that you indicated
 12 that essentially your view had changed because
 13 of, my interpretation of your words, you
 14 observed the same pattern of dealing with the
 15 issue on the Burin Peninsula as you had
 16 observed in respect of ER/PR and you were not
 17 content with that?
 18 MR. WISEMAN:
 19 A. Yes.
 20 THE COMMISSIONER:
 21 Q. Have I misinterpreted you?
 22 MR. WISEMAN:
 23 A. No, no, you've summarized it accurately and
 24 it's a reflection of my comments the other
 25 day.

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1 THE COMMISSIONER:
 2 Q. Okay. Now, when Ms. Chaytor asked you the
 3 question, what came to my mind, and I'm not
 4 sure whether this is where her question was
 5 directed or not, but what came to my mind was
 6 not whether you articulated to Ms. Dawe the
 7 second time around your concerns, but whether
 8 or not first time around you said something
 9 like, "I have concerns about, but, you know,
 10 on this occasion we won't go any further with
 11 it" or whatever terminology you might want to
 12 use, did you sort of say to Ms. Dawe, "I don't
 13 want to see that happen again."?
 14 MR. WISEMAN:
 15 A. I mean, I don't know if I said "I don't want
 16 to see that happen again," but your summation
 17 of the initial comments I made last week is
 18 accurate. And in terms of the conversation
 19 that I would have had with Ms. Dawe around the
 20 ER/PR issue, so in isolation at that
 21 particular time she did talk to me about
 22 whether or not that I had concerns about his
 23 leadership on that very specific issue. And
 24 in as much as I had some difficulties with how
 25 some of the things had been managed, I hadn't

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1 expressed a concern about his leadership as a
 2 general commentary and that I had--as a result
 3 of that conversation obviously she would have
 4 walked away from that conversation recognizing
 5 that in as much as some of the management
 6 decisions would have been made I may not have
 7 been happy with, but I wasn't expressing a
 8 dissatisfaction with his overall leadership.
 9 THE COMMISSIONER:
 10 Q. But you were expressing some concerns about
 11 the handling of a particular issue?
 12 MR. WISEMAN:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. To Ms. Dawe on that occasion?
 16 MR. WISEMAN:
 17 A. Yes, yes.
 18 THE COMMISSIONER:
 19 Q. Okay. I'm sorry, Ms. Chaytor, I've
 20 interrupted you again.
 21 CHAYTOR, Q.C.:
 22 Q. No, thank you.
 23 THE COMMISSIONER:
 24 Q. Carry on.
 25 CHAYTOR, Q.C.:

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1 Q. Thank you. Mr. Wiseman, I'd like to turn now
 2 then to a discussion of some lessons that may
 3 have been learned or perhaps that we could
 4 look to hopefully learn from should a similar
 5 situation as this arise in the future, what
 6 would be the best course of action to be
 7 followed. And I'd like to hear any thoughts
 8 you have on that from your point of view. And
 9 I've discussed some of that already in my
 10 questioning today, but I am wondering what, if
 11 any, mechanism has the government put in place
 12 or planning to put in place to insure that
 13 should an adverse event of this nature arise
 14 in the future, the Department will be able to
 15 assure itself that it's receiving accurate
 16 information as to how the investigation of the
 17 issue is proceeding and what mechanism may be
 18 put in place to reach a timely and appropriate
 19 resolution to insure the best interests of the
 20 public?
 21 MR. WISEMAN:
 22 A. Just a couple of things. And maybe I might
 23 start answering your question with the
 24 reference to the February 22nd release. In
 25 that announcement, in that release of updating

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1 information there was also some announcement
 2 of some initiatives, some investments
 3 government were taking and I'd like to
 4 highlight a couple of them. One, we've made
 5 now a mandatory requirement that all
 6 laboratories in the province be accredited.
 7 So we've started a process already and that
 8 discussion has already started to take place
 9 where laboratories will have to go through a
 10 mandatory accreditation process, a dedicated
 11 accreditation process for laboratory services.
 12 CHAYTOR, Q.C.:
 13 Q. And the Department has mandated that?
 14 MR. WISEMAN:
 15 A. Yes. And we've already had one work--we've
 16 put together a working group lead by an
 17 official in my Department to initiate that
 18 discussion involving the four authorities and
 19 so work is in progress already in exploring
 20 how we might approach that and what kind of
 21 mechanism we put in place to do it and what
 22 kind of processes would we participate in. So
 23 that's already started, that's initiated. The
 24 second piece in terms of the, you know, the

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1 management process we've already indicated in
 2 that release, let me just read for you
 3 directly from it. "The Provincial Government
 4 and the regional health authorities will
 5 establish a new policy that whenever there is
 6 an adverse event that requires communication,
 7 testing or treatment for a group of patients a
 8 single official will be charged with the clear
 9 organizational wide responsibility for
 10 directing patient contact and data management.
 11 This official must have access to an
 12 appropriately skilled data management
 13 professional trained to use or design an
 14 information system which can acquire
 15 comprehensive data for all events in the
 16 response process, provide timely reports and
 17 can be audited." The second thing that comes
 18 out of that which actually arose from your
 19 line of questioning to me back in March that
 20 wasn't a part of this but it was a--your
 21 question prompted the recognition that we
 22 needed to include in here a feedback loop to
 23 the Department.
 24 CHAYTOR, Q.C.:
 25 Q. Yes.

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1 MR. WISEMAN:
 2 A. The other thing that we've learned from this
 3 piece is that, you know, when there is, and I
 4 think I may have mentioned it this morning,
 5 when there is more than one regional health
 6 authority involved in any event, there needs
 7 to be someone that the Department of Health
 8 and Community Services needs to provide to
 9 facilitate the coordination of that activity
 10 between the authorities. So any time that
 11 there's an adverse event or an event such as
 12 what we've talked about here that the
 13 Department will need to be involved and will
 14 be involved in a coordinating role across the
 15 respective authorities that will be involved
 16 from that and that that information will then
 17 flow back to the authority--or back to the
 18 Department so the Department is in that loop
 19 and working with the authority and authorities
 20 on the issue.
 21 CHAYTOR, Q.C.:
 22 Q. Yes.
 23 MR. WISEMAN:
 24 A. And so in terms of the information flow that
 25 connects the Department with the management of

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1 the process itself and being able to have a
 2 dedicated person responsible for the data
 3 management perspective, then it is these
 4 communication breakdowns and the challenges
 5 we're talking about here with respect to
 6 patients finding information out that we
 7 should be in a position to actually insure
 8 that won't happen or to protect ourselves to--
 9 to protect ourselves from that happening. The
 10 other piece in terms of the coordination
 11 piece, you know, the Department is that link
 12 between the four authorities and that
 13 coordinating role will be critical for the
 14 Department in that kind of an event, and then
 15 the information flow. And I think if the--if
 16 we have in place the data management piece and
 17 the single source for managing the event and
 18 the information gathering, we'll be able then
 19 to have as information flows to us at the
 20 Department, then we'll be able to identify
 21 where that information came from and how it
 22 got tabulated.
 23 CHAYTOR, Q.C.:
 24 Q. I see.
 25 MR. WISEMAN:

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1 A. And so therefore when we get the information,
 2 then we can have some confidence of its
 3 accuracy knowing that it was based on some
 4 kind of a well structured system that should
 5 have collected it appropriately.
 6 CHAYTOR, Q.C.:
 7 Q. So is this a policy or protocol which has
 8 already been put in place or is this still
 9 under development?
 10 MR. WISEMAN:
 11 A. No, this is--what I just shared with you now
 12 is -
 13 CHAYTOR, Q.C.:
 14 Q. That's it?
 15 MR. WISEMAN:
 16 A. - is what the opinion of the Department is and
 17 what, well, what will be communicated to the
 18 authorities.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So the Department has come up with this
 21 structure and that will be communicated to the
 22 authorities?
 23 MR. WISEMAN:
 24 A. The piece that I read directly from the
 25 communication of February 22nd is being

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1 communicated to the authorities through this
 2 release. The other three pieces of
 3 information or the other two pieces of
 4 information that I've gleaned is the issue of
 5 the coordination piece is what I've recognized
 6 in recent weeks in the conversation with
 7 Robert as a result of this court--the piece of
 8 work he's been doing, how information was
 9 flowing between the authorities and no one was
 10 really fulfilling that coordinating role
 11 created some challenges and difficulties. And
 12 the second piece was one that you prompted me
 13 to think about in your questioning back in
 14 March was that connection back and the
 15 feedback loop to the Department.
 16 CHAYTOR, Q.C.:
 17 Q. Yes, okay. All right. And the issue then of
 18 the single official who will be responsible
 19 for--dedicated to the task of coordinating the
 20 information, that official would come from
 21 where?
 22 MR. WISEMAN:
 23 A. If it's in--well, if, for example, if the
 24 issue is in the Regional Health Authority in
 25 eastern or central, some senior official in

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1 that authority, because it's an event in that
 2 particular region. The piece within the
 3 Department of Health and Community Services,
 4 if they're involved in a coordinating capacity
 5 between authorities, the most appropriate
 6 person for that would be the ADM for Board
 7 Services.
 8 CHAYTOR, Q.C.:
 9 Q. Yes. And the ADM for Board Services would be
 10 the person then doing the coordination, you're
 11 saying -
 12 MR. WISEMAN:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. - with the other. And I take it that the
 16 official within whichever authority the issue
 17 has arisen, that person is going to be
 18 responsible for the data collection within the
 19 authority. Is that person also going to be
 20 responsible for investigating the cause of the
 21 problem?
 22 MR. WISEMAN:
 23 A. I think the--what this talks about here is
 24 this, there'll be a single person responsible
 25 for the activity. They will need to surround

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1 themselves with the people that, the data
 2 management, for example, the technical people,
 3 the professional information management people
 4 to be able to put together the database. If
 5 there's some kind of clinical assessment needs
 6 to be taken place, then obviously bringing
 7 together and bringing into play the clinical
 8 skills that you'll need to do that kind of
 9 clinical assessment. But that sole person
 10 will be the lead person for that organization
 11 who'll be charged with that responsibility to
 12 assemble that skill set that they need to deal
 13 with the task before them. They themselves
 14 may not be that person who has the skill set,
 15 but they'll be tasked with the responsibility
 16 to assemble the skills that they need to do
 17 it.
 18 CHAYTOR, Q.C.:
 19 Q. And the authority would determine who that
 20 person should be, depending on the situation -
 21 MR. WISEMAN:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. - who the most appropriate person would be?
 25 MR. WISEMAN:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. It's not contemplated that this would be a
 4 regular position, this would be according to
 5 when the situation arose?
 6 MR. WISEMAN:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. That person would be appointed to this task?
 10 MR. WISEMAN:
 11 A. Yeah.
 12 CHAYTOR, Q.C.:
 13 Q. And would that person then be the person
 14 responsible for identifying any experts that
 15 may need to be retained?
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And would the Department contemplate having
 20 any input into that?
 21 MR. WISEMAN:
 22 A. I mean, the input contemplated, obviously,
 23 would be, you know, that if the--when the
 24 event occurred, coming back to some comments I
 25 made earlier in terms of that link between the

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1 Department and the authorities in terms of the
 2 operational relationship, if we had an event
 3 today in one of our authorities that, you
 4 know, would fall into this category here, I
 5 mean, the authority would have already been in
 6 contact with the Department and there had
 7 already a dialogue established. And if, in
 8 fact, the nature of it was such that the
 9 Department officials had some opinions and
 10 thoughts on it, I'm certain that, you know,
 11 the authority would be receptive to those kind
 12 of comments. But I hadn't envisaged it as
 13 being a formal position that they would need
 14 to report back to the Department to get
 15 authority or permission to proceed in a
 16 certain direction, but that link would be
 17 there through the ADM of Board Services.
 18 CHAYTOR, Q.C.:
 19 Q. And there would be regular reporting intervals
 20 to the Department and the Department, I take
 21 it, would set the nature and type of
 22 communications that the Department would
 23 expect to be getting in terms of feedback?
 24 MR. WISEMAN:
 25 A. Yes, exactly.

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1 CHAYTOR, Q.C.:
 2 Q. And there's a protocol that will be drafted -
 3 MR. WISEMAN:
 4 A. Exactly.
 5 CHAYTOR, Q.C.:
 6 Q. - to set that out?
 7 MR. WISEMAN:
 8 A. Exactly.
 9 CHAYTOR, Q.C.:
 10 Q. Has any thought been given to drafting or
 11 setting guidelines as to when the government
 12 would step in and assume management of the
 13 issue? So everything is in place and the key
 14 person or the single official from the
 15 authority is in place and your reporting is
 16 taking place. But what happens when you're
 17 not necessarily satisfied with what you're
 18 hearing back, has any thought been given,
 19 well, we need guidelines to say, well, at this
 20 point in time we are going to intervene?
 21 MR. WISEMAN:
 22 A. If I was the Minister and I reached the point
 23 where I needed to make a determination that I
 24 was about to have someone go into an
 25 organization to manage an event, then I would

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1 really have to contemplate the future of that
 2 board and the CEO of that board.
 3 CHAYTOR, Q.C.:
 4 Q. But is there anything that could happen short
 5 of that so that if the information you're
 6 getting back before it reaches that breaking
 7 point, is there anything that could be done,
 8 guidelines set out for the authority in terms
 9 of the expectations and if they're not being
 10 met, then providing the feedback or the
 11 constructive criticism that's needed for them
 12 to be able to meet the expectations?
 13 MR. WISEMAN:
 14 A. I mean, I think the process that I've just
 15 described in terms of the, you know, if we had
 16 an event of the magnitude of what we're
 17 talking about here and some of the other
 18 things, like the Burin radiology thing, for--
 19 events, for example, and if the--if we had
 20 initial contact with the Department, advised
 21 of the event and the Department was advised,
 22 you know, the protocol I just described
 23 earlier in terms of we'd assign someone to the
 24 project, assign someone to manage this event,
 25 that's their sole function and here's the team

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1 we're assembling and there's a general
 2 discussion about the general direction it's
 3 taking and it involves one authority, then I
 4 would leave it to that authority to manage it,
 5 tied--with that communication feedback to the
 6 Department. If it involved several
 7 authorities, then the point I made earlier
 8 about the coordination role and the Department
 9 would function in that coordinating role. If
 10 as it unfolded, it was being mismanaged or
 11 mishandled to a point where even though there
 12 was continuous dialogue that I needed to
 13 contemplate sending someone in to take that
 14 over, I go back to my earlier comment, I would
 15 not have the confidence in the leadership of
 16 that organization that they could not only
 17 manage this event, but I wouldn't have
 18 confidence to have them stay there as the CEO
 19 of that organization on a go forward basis if
 20 it was reduced to that kind of an operational
 21 involvement by the Department. These are
 22 senior individuals, these are CEOs that are
 23 recruited in these organizations, are senior
 24 individuals. They should come there with
 25 their background and knowledge, skill set that

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1 allows them to be a senior CEO of a major
 2 operation and my expectation and the
 3 expectation that their board would have of
 4 them, that they would be able to manage an
 5 event such as that. In the absence of that,
 6 demonstration of that ability to do that, I
 7 would have the discussion with the CEO or the
 8 board chair about the selection that they've
 9 made for a CEO and what the overall
 10 performance level was of that CEO.
 11 CHAYTOR, Q.C.:
 12 Q. Mr. Wiseman, in this situation there was
 13 information being forwarded to you that you
 14 later determined to be less than complete or
 15 less than accurate.
 16 MR. WISEMAN:
 17 A. That's right.
 18 CHAYTOR, Q.C.:
 19 Q. What has been built into this mechanism that
 20 you're describing to insure that that doesn't
 21 happen, that the information that will be fed
 22 back to your Department will be accurate and
 23 complete?
 24 MR. WISEMAN:
 25 A. In the same way as I just--as I described the

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1 structure of a process where we have skilled
 2 data management people, we'd have--bring into
 3 play here a structured system that would
 4 provide timely reports that can be audited.
 5 So I'd have an ability to be able to have
 6 officials in my Department look at the
 7 information that's being submitted and be able
 8 to then, if needed, audit that information so
 9 we're able to see a trail of information that
 10 lead to certain conclusions. So that it's
 11 audited, has the ability to be audited, it's
 12 structured in a, using language here to
 13 describe it, you know, to acquire
 14 comprehensive data to develop databases, to
 15 have reports that are able to be audited.
 16 You're talking about a, you know, level of
 17 sophistication and structure here that will
 18 give you an ability to be able to verify the
 19 information that you're being supplied. You
 20 know, the event that we're dealing with here
 21 today, for example, and I talked earlier about
 22 an update of information that Robert Thompson
 23 is providing, you know, the Department of
 24 Health and Community Services, or government,
 25 rather, the Government of Newfoundland and

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1 Labrador has put in place this Task Force, has
 2 asked Robert Thompson to do a piece of work.
 3 We are--with what Robert is doing with the
 4 Centre for Health Information is
 5 reconstructing a piece of information,
 6 reconstructing information that in the
 7 ordinary course of operation should have been
 8 done by Eastern Health. And we are in there
 9 today reconstructing a database, doing a piece
 10 of work to reconcile these numbers and to
 11 reconcile the communication flow. Now, the
 12 piece of--the question I think that you're
 13 posing, if I heard it correct and understand
 14 it, is what mechanism would we have in place
 15 to resurrect a group like the Robert Thompson
 16 and have them go in and do this all over
 17 again. And I guess what I'm suggesting to you
 18 is that this is being done today because this
 19 is an unusual event, because this wasn't
 20 managed in that fashion. But what I'm trying
 21 to lay out for you is a belief that if this
 22 were to happen again, that the organization
 23 itself would have approached this task the
 24 same way that Robert Thompson is approaching
 25 it and therefore it will be done within the

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1 organization. If the organization didn't have
 2 the capacity to do that and I found it
 3 necessary to resurrect or to recreate a team
 4 of people like the Robert Thompson's and send
 5 them in, I'd have real concern about the
 6 leadership of that organization.
 7 CHAYTOR, Q.C.:
 8 Q. Has the government retained or sought any
 9 expert advice in crisis management in coming
 10 up with what's being put in place?
 11 MR. WISEMAN:
 12 A. No, we haven't.
 13 CHAYTOR, Q.C.:
 14 Q. Has there been any inquiries made of other
 15 jurisdictions as to how departments of health
 16 approach this issue in other jurisdictions?
 17 MR. WISEMAN:
 18 A. Look at the mandate of the Task Force, Robert
 19 has a--the work that he's doing on, it would
 20 be to actually put together a policy for
 21 government and a position for government and
 22 working with the health authorities to deal
 23 with adverse events on a go forward basis.
 24 I'm looking to the work that Robert is doing,
 25 government is looking to the work that Robert

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1 is doing to provide the insights necessary to
 2 allow us to shape the kind of reference you're
 3 talking about, managing adverse events.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. In the aftermath--sorry. Sorry about
 6 that. In the aftermath of this issue has
 7 there been any change in the policy or
 8 procedure within your Department with respect
 9 to the verification or validation of
 10 information received into the Department and
 11 relied upon by the Department from external
 12 resources?
 13 MR. WISEMAN:
 14 A. No, there's not.
 15 CHAYTOR, Q.C.:
 16 Q. From external sources, I should say. Okay.
 17 Are there any other lessons that have been
 18 learned in terms of the disclosure and
 19 communication practices in this matter so as
 20 to insure the public, and more importantly,
 21 the patients in this situation receive
 22 accurate information other than, well,
 23 technology and updating databases, anything
 24 from a qualitative point of view about
 25 policies of how people and when people should

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1 be communicated with, has the government
 2 looked at that at all?
 3 MR. WISEMAN:
 4 A. I think the whole issue of communication,
 5 patient communication and disclosure, I think
 6 there's been a--through this whole discussion
 7 I think there's been a full recognition that
 8 there was not adequate communication with the
 9 patients who have been impacted here and that
 10 we also know that events of, you know, in '05
 11 and recognizing there was advice given to the
 12 contrary, but I've said before and I'll say
 13 again that in 2005 and 2006 there should have
 14 been a more open disclosure. I think the
 15 issues around disclosure, I think there's
 16 recognition that--and we can learn from what
 17 we just witnessed in the last couple of years,
 18 that patient disclosure is critical and that
 19 being--disclosing information with respect to
 20 issues of a person's health needs to take
 21 place early, needs to take place, you know, in
 22 a timely fashion so that individual can make
 23 appropriate decisions about their own
 24 treatment, their own course of treatment and
 25 how they might choose to do that. I think

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1 the--in recent time, whether it's weeks or
 2 months I think we've had some position
 3 statements by the Patient Safety Institute,
 4 for example, that talks about early
 5 disclosure. We've had statements by medical
 6 associations around early disclosure. I think
 7 the piece of work that Robert Thompson is
 8 doing and he frames up how government may want
 9 to, and the regional health authorities may
 10 want to deal with adverse events. And I would
 11 suspect that based on, you know, what we now
 12 know and now understand what is current best
 13 practice that he will no doubt be including in
 14 his series of recommendations comments about
 15 early disclosure, full disclosure and the
 16 earlier the disclosure, the more appropriate
 17 it will be. I not--doubt at all that that
 18 will be a part of his recommendation that he
 19 will bring forward because we've learned that
 20 lesson here. The second piece around
 21 communication, you know, it's important that
 22 we have, you know, good communication with
 23 patients. And the other thing that we've
 24 learned in this process is that, or has become
 25 apparent in this process, you know, there's a

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1 desire by society to have full and open public
 2 disclosure, as well, in addition to the
 3 patient disclosure. And so there's a number
 4 of lessons to be learned from this exercise
 5 here with respect to the areas around
 6 disclosure and communication.
 7 CHAYTOR, Q.C.:
 8 Q. So has any thought or consideration been given
 9 to how in such a situation, should it arise in
 10 the future, all stakeholders can be consulted
 11 within the process?
 12 MR. WISEMAN:
 13 A. I think the thought has been given to
 14 discussions taking place and the person who's
 15 actually pulling that together for us as a
 16 position is Robert Thompson.
 17 CHAYTOR, Q.C.:
 18 Q. And in the piece of work that Mr. Thompson is
 19 doing, a significant component of the database
 20 anyhow involves the patient contact and we've
 21 talked about that in some of the updates that
 22 you've given us today on the database. But to
 23 your knowledge in the accumulation of that
 24 information, was there any consultation with
 25 the patients?

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1 MR. WISEMAN:
 2 A. Accumulation?
 3 CHAYTOR, Q.C.:
 4 Q. The accumulation of the information as to what
 5 patients were contacted, when they were
 6 contacted? Did anyone ask the patients?
 7 MR. WISEMAN:
 8 A. If they got a call?
 9 CHAYTOR, Q.C.:
 10 Q. Yes, what was relied on, what information was
 11 relied on?
 12 MR. WISEMAN:
 13 A. That's a question I wouldn't want to try
 14 because I may not do justice to the answer,
 15 because Mr. Thompson would have a much more
 16 comprehensive knowledge of how they approached
 17 the data collection exercise and I wouldn't
 18 want to diminish anything he's done or to
 19 answer your question and not give credit to
 20 something that's been completed as a part of
 21 the exercise he's done. But I understand,
 22 though, there's been a heavy reliance on
 23 information that's contained in records within
 24 the authority's documentation. Some of the--
 25 there's a piece of work taking place right now

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1 that has been initiated as a result of some
 2 learnings in recent days that deals with those
 3 patients who--the records within Eastern
 4 Health indicated that the method of contact
 5 was through the family physician. There's an
 6 exercise that's starting now to look at, to go
 7 back and actually verify that to see if it
 8 actually took place and that will, no doubt,
 9 result in direct contact with patients. But
 10 there may have been other times when some of
 11 this information in the database has been
 12 shared with you, may have been done by some
 13 patient contact, but I really don't know.
 14 CHAYTOR, Q.C.:
 15 Q. Yes, and I would suggest that most, if not all
 16 of the information that we've been provided
 17 with would be based on information provided by
 18 the Regional Health Authorities?
 19 MR. WISEMAN:
 20 A. I suspect that you're right, but as I say, I
 21 wouldn't want to say with certainty that's the
 22 case.
 23 CHAYTOR, Q.C.:
 24 Q. And you don't even know if there was ever any
 25 attempt to gather information from the

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1 patients themselves?
 2 MR. WISEMAN:
 3 A. I wouldn't know that. You may want to ask Mr.
 4 Thompson that question.
 5 CHAYTOR, Q.C.:
 6 Q. I will indeed, thank you. Has any
 7 consideration been given to when, in a
 8 situation such as this, it would be necessary
 9 to bring in external professionals to manage
 10 the situation or to give advice on the
 11 situation?
 12 MR. WISEMAN:
 13 A. We haven't had that discussion.
 14 CHAYTOR, Q.C.:
 15 Q. What about in terms of when it's appropriate
 16 to receive advice by way of a ethical
 17 consultation?
 18 MR. WISEMAN:
 19 A. I haven't had that discussion myself.
 20 CHAYTOR, Q.C.:
 21 Q. And you understood and I realize that and we
 22 talked about it before that there was some
 23 misunderstanding in when you thought there was
 24 an ethical consult in this case.
 25 MR. WISEMAN:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. It was later and it was with respect to the
 4 deceased families -
 5 MR. WISEMAN:
 6 A. Exactly, yes.
 7 CHAYTOR, Q.C.:
 8 Q. Deceased patients and contact with their
 9 families.
 10 MR. WISEMAN:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And you spoke in the House in some detail
 14 about who was on that committee or who you
 15 understood was on that committee. Did anyone
 16 ever advise you that the solicitor for HIROC
 17 was on the committee?
 18 MR. WISEMAN:
 19 A. No.
 20 CHAYTOR, Q.C.:
 21 Q. And what do you think of the appropriateness
 22 of that?
 23 MR. WISEMAN:
 24 A. Pretty unusual to have your insurance
 25 company's solicitor providing you ethical

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1 advice on an issue that may involve
 2 litigation.
 3 CHAYTOR, Q.C.:
 4 Q. Mr. Wiseman, we've heard from Mr. Ottenheimer,
 5 Mr. Osborne and yourself, speak about the size
 6 of your department and the number of issues
 7 that you have to deal with at any given time,
 8 in fact, you indicated to us that it was a few
 9 months before you actually had this issue
 10 brought to your attention through the media
 11 and you were busy with other issues, the
 12 Zachary Turner issue and the budget process.
 13 At one point in time, of course, the
 14 Department of Health and Community Services
 15 was two departments, it was separate. I
 16 understand this is the largest department in
 17 terms of certainly the Provincial budget. Are
 18 there any discussions around whether or not
 19 this is a manageable department or whether or
 20 not it in fact should be segregated?
 21 MR. WISEMAN:
 22 A. The notion of Health and Community Services, I
 23 think it becomes important here to look at the
 24 full, you know, if you're looking at the size
 25 of the department, looking at the programs and

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1 services, you need to look at the inter-
 2 relationships and the connection between the
 3 range of programs and services. Both the
 4 acute side, the long-term care side and the
 5 community side, if you go back far enough in
 6 history, you'll find that they were segregated
 7 in those three different areas: acute care
 8 medicine, acute care services were considered
 9 one; long-term care, which was predominantly
 10 the personal care homes and nursing homes
 11 would be considered another; and community
 12 base programs would be considered another.
 13 But patients don't find themselves in one
 14 system or the other, they move back and forth
 15 within that continuum of care and so the trend
 16 across the country and the thinking, best
 17 practices today, is looking at an integration
 18 of services, so that people are managed across
 19 a continuum of care so that you have a better
 20 co-ordination of services, at the end of the
 21 day should result in a better quality of
 22 service and better programming to the clients
 23 and patients that you serve. So the issue of
 24 the structure of acute and having the
 25 integration of acute, long-term care and

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1 community services as seen across the country
 2 as a positive move, one that provides for a
 3 better continuum of care, one that provides
 4 for a better management of resources along
 5 that continuum of care and at the end of the
 6 day, the population of a particular
 7 jurisdiction is better served by that kind of
 8 structure.
 9 CHAYTOR, Q.C.:
 10 Q. Are there times that the level of knowledge
 11 and your participation in a given issue is
 12 limited by what other compelling issues you
 13 may have on your plate in any given day?
 14 MR. WISEMAN:
 15 A. The structure of the department, the size of
 16 the department is one thing, the structure of
 17 the department is another in terms of there
 18 are more ADMs in the Department of Health and
 19 Community Service than you might find in other
 20 departments, so the resources supports around
 21 the Department of Health and Community
 22 Services within the department would be
 23 broader than what you might find in some other
 24 departments of government. But clearly, I
 25 think in as much as it is a large portfolio,

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1 it's one that requires a commitment of time
 2 and energy, as do many other departments of
 3 government, but I think you know, with the
 4 breadth of the people that are there, the
 5 breadth of the department, in terms of how
 6 it's structured and supported, you know, the
 7 critical thing for, as a Minister, is that you
 8 have a quality support team around you who are
 9 able to provide that support, and as well, you
 10 have the Regional Health Authorities are also
 11 structured themselves around that full
 12 continuum of care because they provide a range
 13 of services, both acute, long-term care and
 14 community because they're at the front line
 15 providing to the delivery model and that full
 16 integration of acute, long-term care and
 17 community is reflected in how we structure our
 18 Regional Health Authorities as well.
 19 CHAYTOR, Q.C.:
 20 Q. Mr. Wiseman, you thought in the initial few
 21 months of your assuming this portfolio that
 22 the ER/PR issue had been dealt with by your
 23 predecessor. Is there anything in looking at
 24 how this issue unfolded from the department's
 25 point of view, is there anything in the

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1 internal structures of the department that
 2 needs to be looked at or re-evaluated to
 3 ensure that accurate and timely information
 4 flows to the Minister on all issues?
 5 MR. WISEMAN:
 6 A. I think the term, just so we put in context my
 7 comment about the first months of my being in
 8 the position as Minister, what I had indicated
 9 to you that in those first couple of months--I
 10 became Minister in January month, at any given
 11 time at any part of the year, there will be
 12 issues that a Minister is involved with that
 13 consumes a fair bit of his attention or her
 14 attention and there will be files that will
 15 keep them quite busy for a period of time.
 16 And during that time, you know, the time is
 17 not divided evenly among every file that would
 18 exist in the department and so, during the
 19 period of my becoming Minister in January, I
 20 had indicated that I had provided a cursory
 21 overview of what was in my briefing book to
 22 determine the issues that were identified by
 23 the department officials as being ones that
 24 were, you know, the issues that the department
 25 had been either involved with or ongoing

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1 issues or things that were in the hopper
 2 (phonetic) in some respects. And I had
 3 indicated that in going through that, I had
 4 dealt with those issues that were timely and
 5 needed some immediate action and those that
 6 didn't need an immediate action, I deferred
 7 until later, but the ones that did need an
 8 immediate action was a budget, the other one
 9 that needed an immediate action would be
 10 dealing with the Child Youth and Family
 11 Services system. In the same way, in the
 12 last, you know, week or so, involved with the
 13 process here at the Commission. This is the
 14 most important file today that's on my plate
 15 and this is the one that I'm dealing with
 16 today and there's other files that may not get
 17 my attention, and so that's the nature of what
 18 it is to be a Minister. My colleagues in
 19 other portfolios would have that same kind of
 20 a response for you, I believe, because they
 21 too may have varying things that might be, you
 22 know, pertinent today, while other things
 23 don't require any immediate action. And so my
 24 comment about the ER/PR file when I became
 25 Minister last year, there was no immediate

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1 action required and so therefore, I turned my
 2 attention to those files that needed an
 3 immediate action.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and my question, I guess, is that
 6 there's obviously been some analysis done as
 7 to what may or may not have been lacking in
 8 the Regional Health Authorities to have
 9 contributed, in particular, to the
 10 communication issues that arose. I'm
 11 wondering whether or not there's been any
 12 retrospective analysis or any plan to do any
 13 retrospective analysis from the department's
 14 point of view on how to move forward and to
 15 deal with a situation like this in the future,
 16 in terms of the internal communications within
 17 the department.
 18 MR. WISEMAN:
 19 A. I think one of the things, the biggest thing
 20 that--and is linked to what I said a moment
 21 ago, if we have a person in the Health
 22 Authority who is seized with the
 23 responsibility to manage an adverse event and
 24 they're connected directly to the ADM of Board
 25 Services in the department, that flow of

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1 information is coming to that sole person.
 2 And then we have the information that is
 3 coming, is coming from a source that has the
 4 capacity to be audited, then with those
 5 connections made, between the dedicated person
 6 at the authority and the person within our
 7 department, because one of the things we have
 8 learned from this piece is information--some
 9 information is flowing by way of
 10 Communications people, some information is
 11 flowing by way of the Deputy Minister and some
 12 information was flowing by way of the ADM.
 13 And I think when you look at those three
 14 different sources, in as much as the
 15 information was coming and all of it, you
 16 know, had some merit and none of it was
 17 intended to be misleading in any fashion, it
 18 was coming from three different sources and I
 19 think, you know, what we were envisaging as
 20 having a sole person at the authority level
 21 dealing with an adverse event, plugging into a
 22 sole contact within the department, which I
 23 believe needs to be the ADM of Board Services
 24 because that's the connection that already
 25 exists, then we'll have a single source of

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1 information that's coming from a verifiable
 2 and auditable database. So we should have
 3 then an improved flow of information and
 4 improved reliability in that information that
 5 is coming and the accuracy of that
 6 information.
 7 CHAYTOR, Q.C.:
 8 Q. Mr. Wiseman, I notice that the department is
 9 advertising for a medical consultant.
 10 MR. WISEMAN:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And that includes a person who can provide
 14 advice on policies surrounding quality
 15 assurance pieces?
 16 MR. WISEMAN:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Is that a new position?
 20 MR. WISEMAN:
 21 A. No, it's a position that has been vacated as a
 22 result of retirement. Dr. Ed Hunt is retiring
 23 and that's the replacement for that position.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. Is there any plan to hire or any need

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1 been identified to hire any new personnel
 2 within the department in the aftermath of the
 3 ER/PR issue?
 4 MR. WISEMAN:
 5 A. No. One of the things that you might note as
 6 well in the announcement that I made in
 7 February of 2008, February 22nd, I had
 8 indicated that we would be putting together a
 9 quality network and, which is an initiative
 10 that we are going to re-examine all of the
 11 quality initiatives in our four health
 12 authorities.
 13 CHAYTOR, Q.C.:
 14 Q. Now is that different than what you've
 15 described to us as being how to respond to an
 16 adverse event?
 17 MR. WISEMAN:
 18 A. Yes, very separate issue.
 19 CHAYTOR, Q.C.:
 20 Q. And what's the quality network team, what is
 21 that?
 22 MR. WISEMAN:
 23 A. What we'll do here, there's two aspects of
 24 this, comment I would like to make, one if you
 25 look back at the Terms of Reference, the Terms

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1 of Reference when we set up the role that
 2 Robert Thompson now has and with respect to
 3 the adverse events, but there's one other
 4 piece of work that we've asked him to do, is
 5 we have asked him to identify a structure and
 6 a mandate, a role, the mandate for what we
 7 referred to as a quality council as a
 8 government or as a political party, we've made
 9 a commitment in 2003 to establish a quality
 10 health council that would have a, at the time
 11 we had a concept of what that would look like
 12 and we've never moved yet to flesh out what
 13 that role would be. But it's a commitment
 14 that we had made and that quality council will
 15 be an organization that will have an oversight
 16 responsibility for quality initiatives in our
 17 health system and what we've asked Robert
 18 Thompson to do is to--because there's a couple
 19 of examples of that around the country and
 20 we've asked Robert to do some research on how
 21 might we best structure that, what it might
 22 look like, because there's different models
 23 being used elsewhere in the country. And so
 24 we've asked Robert to do a bit of research on
 25 that particular piece and to bring forward his

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1 recommendation as to what a role and mandate
 2 might be, what a structure might look like and
 3 what a budget might look like, so we'll have
 4 it to inform next year's budget process. But
 5 in preparation for some of that, because right
 6 now, today, we need to understand what are
 7 some of the current quality initiatives in our
 8 four health authorities, you know, how well is
 9 it co-ordinated, how well is information
 10 shared, does one board work together with
 11 another in establishing what might be best
 12 practices and looking at developing Provincial
 13 standards, verses something that's unique to
 14 each individual, each individual authority.
 15 So the Deputy Minister, as we speak now, is in
 16 a process of putting together a small group of
 17 individuals to form what we have referred to
 18 as a network, which is like a forerunner of
 19 this quality council and a part of their
 20 initial task would be to do that information
 21 gathering, that surveillance of what is
 22 currently in play in the province, what
 23 currently is best practice out there and what
 24 are some of the things that we might already
 25 take from within the system to improve on what

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1 we now do, and to look at if there are any
 2 gaps in any quality initiatives that we might
 3 have now. We're talking about quality
 4 insurance programs, risk management programs,
 5 infection control programs, all of those
 6 things that would fall under that umbrella,
 7 sometimes referred to as risk management
 8 initiatives, sometimes referred to as quality
 9 initiatives, but there's a number of them and
 10 they deal with--so there's a variety of that
 11 kind of stuff that we need to get a handle on
 12 what it is we're now doing in the system. So
 13 that's the piece of work for the network, so
 14 this foundation work that the network will do,
 15 will feed into what will become a different
 16 and more expanded role for a quality council
 17 on a go-forward basis where we'll have health
 18 authorities, I envisage health authorities,
 19 you know, feeding information into this
 20 quality council. That quality council will be
 21 able to report to the public on quality
 22 initiatives within our health system and to be
 23 able to provide reports on issues that are
 24 happening in our health system that speaks to
 25 the issue of quality and continuous quality

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1 improvement.
 2 CHAYTOR, Q.C.:
 3 Q. And the people on that quality network team
 4 are representatives from the four authorities?
 5 MR. WISEMAN:
 6 A. No, that's in the process of being established
 7 as we speak, but we--there would be somebody
 8 there from within the health system, but we
 9 want to bring together, this will be a small
 10 group of a half a dozen people who have some
 11 background and experience in quality. They
 12 may not necessarily be in the health system.
 13 We can learn from other industries around
 14 quality and quality initiatives, you know, the
 15 academic community can play a role there and
 16 the Deputy and I have had some discussions
 17 around the composition of that. There will be
 18 someone who will be currently within one of
 19 the health authorities now, but it's not a
 20 mechanism that will see representation from
 21 each of the authorities.
 22 CHAYTOR, Q.C.:
 23 Q. Okay.
 24 MR. WISEMAN:
 25 A. I've had this discussion with the Board Chairs

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1 and the CEOs and they all understand that this
 2 is not a collection of people who are
 3 currently working with them now, but this is
 4 looking at bringing some knowledge and some
 5 skills to play in quality initiatives.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. One moment. Mr. Wiseman, other than
 8 the signing off now on briefing notes, what
 9 has been done, if anything, to ensure that the
 10 information contained in briefing notes is
 11 more accurate? I know you answered earlier
 12 that there's no mechanism put in place where
 13 the source of external information has to be
 14 identified. Has anything else been done to
 15 ensure the accuracy of information contained
 16 in briefing notes?
 17 MR. WISEMAN:
 18 A. I mean, the issue of the briefing notes, I
 19 mean nothing formally if you're looking at a
 20 program that's been initiated or some kind of
 21 auditing mechanism for briefing notes. We now
 22 have a process where the person, which is the
 23 same as what we had before, a person prepares
 24 the information, it's verified by--approved by
 25 someone, generally an ADM level position and

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1 then signed off by the Deputy and by the
 2 Minister. And, you know, through those
 3 sequences of approvals and signing off, if
 4 there's questions or queries that arise, then
 5 they'll be, you know, information might be
 6 elaborated on or changed or strengthened or
 7 additional information sought through that
 8 process, but if you're asking if there's a
 9 verification process, no, there's no
 10 verification process beyond what I've just
 11 described with the approval mechanisms that
 12 are in place.
 13 CHAYTOR, Q.C.:
 14 Q. And so what's your comfort level to--bearing
 15 in mind some of the issues that were
 16 encountered in this issue, what's your comfort
 17 level in standing in the House of Assembly and
 18 speaking publicly on an issue with the use of
 19 briefing notes, what is your comfort level to
 20 satisfy yourself that the information you're
 21 about to give is, in fact, complete and
 22 accurate?
 23 MR. WISEMAN:
 24 A. I mean, as a Minister, I cannot and no
 25 minister in government would be in a position

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1 to start verifying the information of briefing
 2 notes as we're given them.
 3 CHAYTOR, Q.C.:
 4 Q. Well what system can be put in place to ensure
 5 that if there's external information relied
 6 on, that -
 7 MR. WISEMAN:
 8 A. External information I can understand that we
 9 may want to have a source of that, you know,
 10 in terms of, you know, if a statistic has been
 11 cited, then to be able to reference the source
 12 of that, how we got it or if it's a factual
 13 statement that is attributed to a particular
 14 agency or body that's external to government,
 15 you know, I can--your point is well taken with
 16 respect to acknowledging that in the source,
 17 in the document itself or in the briefing
 18 note. But, you know, beyond that in terms of
 19 from a very practical point of view, you know,
 20 to be able to verify the source of information
 21 that's in these briefing notes when they come
 22 to you prepared by someone who is working in
 23 that division or area of comment, and then
 24 have it signed off by a senior person who
 25 approves it, who also generally has a

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1 reporting relationship with that individual.
 2 And then, when it comes to my desk, it has
 3 already been signed off by my Deputy, who
 4 would have read it and if that person has, you
 5 know, some issues or questions or concerns
 6 they want to get some elaboration on, then to
 7 have them sign off on it. When it gets to me,
 8 for my signature, you know, there has to be,
 9 if there's some additional information that I
 10 am seeking or that the information is not
 11 clear enough for me, then my mind would turn
 12 to those couple of questions. But my mind, if
 13 my mind has to turn to questioning to the
 14 liability of it and asking for verification of
 15 what's in here, then the briefing note becomes
 16 another functional tool anyway and would have
 17 to look at how we actually get information,
 18 other than a briefing note.
 19 CHAYTOR, Q.C.:
 20 Q. Mr. Wiseman, I thank you for your patience,
 21 it's been longer than we expected and you've
 22 been helpful, so thank you. If there's
 23 anything else that you can think of that would
 24 be helpful to the Commissioner that I haven't
 25 covered with you, by all means, you can go

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1 ahead and--is there anything else that you can
 2 think of?
 3 MR. WISEMAN:
 4 A. Not that I can think of at this moment. Maybe
 5 before the evening is over I may make a few
 6 comments.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, thank you.
 9 THE COMMISSIONER:
 10 Q. Mr. Simmons, do you have any questions for
 11 this witness?
 12 MR. SIMMONS:
 13 Q. Yes, Commissioner, I do.
 14 THE COMMISSIONER:
 15 Q. Do you want to take the afternoon break before
 16 we do that?
 17 MR. SIMMONS:
 18 Q. That would be fine.
 19 THE COMMISSIONER:
 20 Q. All right, why don't we take fifteen minutes.
 21 (RECESS)
 22 THE COMMISSIONER:
 23 Q. Please be seated. Mr. Simmons.
 24 MR. ROSS WISEMAN, EXAMINATION BY MR. DANIEL SIMMONS
 25 MR. SIMMONS:

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1 Q. Mr. Wiseman, my name is Dan Simmons, I'm here
 2 acting for Eastern Health and I have a number
 3 of things I want to ask you about this
 4 afternoon, but I promise you it will only be
 5 this afternoon and I'll be done.
 6 MR. WISEMAN:
 7 A. That will be good.
 8 MR. SIMMONS:
 9 Q. I understood from when you first started your
 10 evidence that prior to entering politics you
 11 had a fifteen year career as an administrator
 12 in health care system.
 13 MR. WISEMAN:
 14 A. In an administrative function, yes.
 15 MR. SIMMONS:
 16 Q. In an administrative function, which was, I
 17 believe, at Clarendville.
 18 MR. WISEMAN:
 19 A. It was.
 20 MR. SIMMONS:
 21 Q. And that would have started when it was a
 22 relatively small organization, managing the
 23 health care facilities in Clarendville alone,
 24 would it?
 25 MR. WISEMAN:

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1 A. Exactly, yes.
 2 MR. SIMMONS:
 3 Q. And then it would have expanded to the
 4 Peninsula's Health Care Authority which
 5 included the Bonavista Peninsula facilities
 6 and the Burin Peninsula facilities?
 7 MR. WISEMAN:
 8 A. That's true, yes.
 9 MR. SIMMONS:
 10 Q. Just generally what sort of role did you play
 11 within that larger system once it became the
 12 Peninsula's Health Care?
 13 MR. WISEMAN:
 14 A. Peninsula's Health Care Corporation, my role
 15 at the time was Director of Human Resources.
 16 MR. SIMMONS:
 17 Q. Okay, and as Director of Human Resources, I
 18 presume you would have had the opportunity to
 19 sit in on executive or other administrative
 20 type meetings in which the general management
 21 of the authority was discussed, would you?
 22 MR. WISEMAN:
 23 A. On occasion, yes.
 24 MR. SIMMONS:
 25 Q. Would that be a regular thing every month or

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1 two that there'd be a meeting with the CEO and
 2 the executive, the various directors?
 3 MR. WISEMAN:
 4 A. That would have happened, that kind of
 5 mechanism, I would have been involved with
 6 that mechanism at the former Clarendville Area
 7 Hospital Board, but not with the Peninsula's
 8 Health Corporation.
 9 MR. SIMMONS:
 10 Q. Okay, and over those fifteen years in the
 11 system, I gather from the ease from which you
 12 have been able to speak about health care and
 13 the way it works and what some of the
 14 principles are, that you probably learned
 15 quite a bit about the way health care is
 16 provided and health care administration works
 17 in the province.
 18 MR. WISEMAN:
 19 A. I wouldn't present myself as an expert, but I
 20 acquired some knowledge over the course of
 21 that time and my time in government.
 22 MR. SIMMONS:
 23 Q. Sure. Did you come across the consent of what
 24 is sometimes called the blame free culture
 25 within health care?

1 MR. WISEMAN:
 2 A. Yes.
 3 MR. SIMMONS:
 4 Q. And what do you understand that to be?
 5 MR. WISEMAN:
 6 A. It's a process that, as part of the continuous
 7 quality improvement process that people
 8 examine events, examine actions to, with a
 9 view of learning from it and doing it in a
 10 fashion so that everybody does it in a fashion
 11 that's uninhibited, if you share your
 12 thoughts, share your views in an uninhibited
 13 fashion, recognizing that it's with a view of
 14 improving something, rather than with a view
 15 of blaming someone, and it's open and free
 16 flowing for that reason.
 17 MR. SIMMONS:
 18 Q. Okay. During your time in the health care
 19 system, did you observe an evolution towards
 20 that kind of a blame free approach to the way
 21 that events were handled within health care?
 22 MR. WISEMAN:
 23 A. Well, I mean, I don't know if I observed an
 24 evolution, it was something that I understood
 25 existed when I started working in the system,

1 be a part of that kind of a discussion and
 2 would probably subscribe to it, but I've never
 3 had a--or participated in a discussion with my
 4 senior team with respect to that, other than
 5 the discussions we would have had over the
 6 course of the recent past as we talked about
 7 the concept of peer review that was alluded to
 8 earlier.
 9 MR. SIMMONS:
 10 Q. Uh-hm.
 11 MR. WISEMAN:
 12 A. And in that context, you know, we did have
 13 some discussion around that principle.
 14 MR. SIMMONS:
 15 Q. Uh-hm. So you would agree with me, would you,
 16 that it's a well entrenched principle in
 17 health care that it's important when there's a
 18 problem to find a way to fix it and that
 19 signing blame or responsibility for the cause
 20 of the problem is often a secondary goal,
 21 rather than the primary goal. The primary
 22 goal is to fix it for the purpose of providing
 23 proper health care in the future?
 24 MR. WISEMAN:
 25 A. I think the context in which that has arisen

1 it was kind of a language that was being used,
 2 limited at that time, but at least in my
 3 circle it was used at that time and I wasn't
 4 real close to the quality initiative's piece
 5 to have used it frequently in my vocabulary,
 6 but, so it may have evolved without my
 7 recognizing it, but clearly it's a reference
 8 that I understand.
 9 MR. SIMMONS:
 10 Q. Okay, and currently in the Department of
 11 Health. Could we say that the department
 12 subscribes to that type of philosophy that
 13 it's appropriate to develop a blame free
 14 culture within the health care institutions in
 15 the province?
 16 MR. WISEMAN:
 17 A. Whether philosophically as a department, I
 18 have not been a part of a philosophical
 19 discussion around whether the department
 20 supports that view or doesn't support the
 21 view. I suspect that because it's an
 22 entrenched view within the health system, that
 23 those who work more closely on a day-to-day
 24 basis within the public service at the senior
 25 level particularly, you know, would obviously

1 is in the context of clinical evaluation.
 2 MR. SIMMONS:
 3 Q. Yes.
 4 MR. WISEMAN:
 5 A. I've never heard it, you know, in the context
 6 of, although it's a principle that some may
 7 espouse, but I've never heard it talked about
 8 in the context of other management type
 9 decisions that would be made or decisions that
 10 would be made about other areas of operation
 11 where, you know, someone may do an evaluation
 12 and determine that, you know, this is wrong,
 13 somebody made a mistake, it should have been
 14 done this fashion and therefore, someone has
 15 to be held accountable for that. Then the
 16 context that I've been a party to discussions
 17 around it and in the context of any
 18 discussions that I would have participated in,
 19 has been in the context of clinical issues.
 20 MR. SIMMONS:
 21 Q. Yes, okay. Now you've told us just earlier
 22 today when you were asked some questions in
 23 relation to the Court hearing that took place
 24 in Supreme Court here about whether the two
 25 external review reports would be available for

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1 use in this hearing, you told us that
 2 government took no part, chose to take no part
 3 in that particular hearing, correct?
 4 MR. WISEMAN:
 5 A. That's true.
 6 MR. SIMMONS:
 7 Q. And did I understand you to explain, though,
 8 that the department understood that there was
 9 a legitimate issue to be addressed with
 10 considerations on each side, that was the
 11 protection of peer review quality assurance
 12 work verses the interest in open disclosure
 13 for the purpose of this inquiry. That was
 14 recognized when government made its position--
 15 made its decision not to participate in that
 16 Court hearing.
 17 MR. WISEMAN:
 18 A. That's right, I knew that, yes.
 19 MR. SIMMONS:
 20 Q. Okay, so from that point of view, government
 21 was, like others, I guess, looking to that
 22 decision for guidance as to what was the right
 23 thing to do in relation to those reports?
 24 MR. WISEMAN:
 25 A. With the understanding that the reports were

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1 being characterized as being peer review
 2 reports, yes.
 3 MR. SIMMONS:
 4 Q. Yes.
 5 MR. WISEMAN:
 6 A. We were.
 7 MR. SIMMONS:
 8 Q. Okay, I have one question for you in relation
 9 to the relationship between the Board of
 10 Eastern Health and the Minister of the day and
 11 I'd like you to have a look at one exhibit and
 12 that's P-0099 please? Now this exhibit was
 13 put in when former Minister Ottenheimer was in
 14 that chair and it's a letter dated November
 15 23rd, 2005 from Mr. Ottenheimer to Ms. Dawe,
 16 Chair of the Board of Trustees.
 17 MR. WISEMAN:
 18 A. Uh-hm.
 19 MR. SIMMONS:
 20 Q. I'm just wondering if you are familiar with
 21 this, if you have seen this letter before?
 22 MR. WISEMAN:
 23 A. Very recently, yes.
 24 MR. SIMMONS:
 25 Q. Until very recently, had you been aware that

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1 this letter existed?
 2 MR. WISEMAN:
 3 A. No.
 4 MR. SIMMONS:
 5 Q. Had you been aware that there had been a
 6 discussion between Minister Ottenheimer and
 7 the Chairs of the four Regional Health
 8 Authorities which lead to four letters like
 9 this going out setting out the Minister's
 10 expectations for their roles?
 11 MR. WISEMAN:
 12 A. No, I was not.
 13 MR. SIMMONS:
 14 Q. Have you had a chance to read through the
 15 letter and see what those expectations were?
 16 MR. WISEMAN:
 17 A. I have, yes.
 18 MR. SIMMONS:
 19 Q. How does that accord with your understanding
 20 of what the expectations were when you became
 21 Minister?
 22 MR. WISEMAN:
 23 A. They're similar.
 24 MR. SIMMONS:
 25 Q. Any significant differences? And you can

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1 scroll down and look at it, if you want.
 2 MR. WISEMAN:
 3 A. Maybe if I, I tell you I find it hard to read
 4 the screen, I'll tell you my age. See if I
 5 can find the hard copy. In general terms,
 6 yes.
 7 MR. SIMMONS:
 8 Q. Good, thank you.
 9 MR. WISEMAN:
 10 A. The reference to the Regional Health
 11 Authorities Act would, upon its proclamation
 12 you would probably strengthen this letter
 13 somewhat to reflect what's in the new
 14 Legislation.
 15 MR. SIMMONS:
 16 Q. Right. We heard from Ms. Dawe that her
 17 understanding of it was the new Board, when
 18 established for Eastern Health, that the
 19 intention was that it would govern itself as
 20 if the new Regional Health Authorities Act had
 21 actually been proclaimed in anticipation of
 22 that Legislation coming into force. Was that
 23 your understanding of the situation when you
 24 became the Minister as well?
 25 MR. WISEMAN:

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1 A. I hadn't--I think I asked the question here
 2 and it was referenced to that particular point
 3 I think the way it was framed, would I have
 4 assumed that they were acting in that fashion,
 5 and I think my comment was given the fact they
 6 were created in 2005 and this Legislation came
 7 in around that same time, that people would
 8 have acted accordingly. But the reason I make
 9 the reference to the proclamation of that Act
 10 is that that Act strengthens, I believe, the
 11 authority that the Board Minister can exercise
 12 over the Board and this letter doesn't
 13 necessarily, you know -
 14 MR. SIMMONS:
 15 Q. Right, it doesn't spell it out in those terms.
 16 MR. WISEMAN:
 17 A. It doesn't spell it out in those terms that
 18 there would have been a greater degree of
 19 authority vested in that Legislation.
 20 MR. SIMMONS:
 21 Q. Okay, good, thank you. Now, I had a few more
 22 questions for you about the quality assurance
 23 and the way it works in the system and I'm
 24 going to suggest that for something like
 25 laboratory services, there's a number of

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1 places that we can look to to find a means for
 2 assuring the quality of the services provided
 3 and that one of those is in the form of
 4 accreditation. And through your position as
 5 Minister of Health and your previous
 6 experience in the health care system, I
 7 presume you would have some general concept of
 8 how hospital accreditation works, what it is
 9 and what sort of things come out of it.
 10 MR. WISEMAN:
 11 A. Some general notion.
 12 MR. SIMMONS:
 13 Q. Yes, and that would you have understood that
 14 accreditation is something that's done by some
 15 external body, such as the Canadian Council on
 16 Health Services Accreditation in this case,
 17 which now accredits Eastern Health, correct?
 18 MR. WISEMAN:
 19 A. Yes.
 20 MR. SIMMONS:
 21 Q. And that that body would provide people from
 22 outside of the organization to come in and
 23 look at it, external reviewers of some sort,
 24 correct?
 25 MR. WISEMAN:

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1 A. That's true, I fully understand, yes.
 2 MR. SIMMONS:
 3 Q. And that they would have a set of standards
 4 that they would use to compare the functioning
 5 of the organization they are looking at to
 6 some objective benchmarks that they bring with
 7 them.
 8 MR. WISEMAN:
 9 A. Yes.
 10 MR. SIMMONS:
 11 Q. And you would have had experience, I presume,
 12 at Peninsula's, for Peninsula's to go through
 13 accreditation like that, at the time?
 14 MR. WISEMAN:
 15 A. Yes.
 16 MR. SIMMONS:
 17 Q. And normally there would be a report that
 18 would come back which would comment on how the
 19 organization measures up against those
 20 standards?
 21 MR. WISEMAN:
 22 A. Yes.
 23 MR. SIMMONS:
 24 Q. And typically there would also be
 25 recommendations, would there not?

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1 MR. WISEMAN:
 2 A. Typically there always is.
 3 MR. SIMMONS:
 4 Q. There always is.
 5 MR. WISEMAN:
 6 A. I shouldn't say "always", I've never, I
 7 wouldn't go that far, but as I understand it,
 8 there will be a rare exception where you can
 9 have accreditation with no recommendations.
 10 MR. SIMMONS:
 11 Q. Right. And would it be reasonable then to
 12 assume as well, to say as well that part of
 13 the purpose of the accreditation is to find
 14 where those recommendations can be made for
 15 the purpose of continuously improving the
 16 organization that's being reviewed and being
 17 accredited.
 18 MR. WISEMAN:
 19 A. Exactly. That's what I understand.
 20 MR. SIMMONS:
 21 Q. Okay, now do you know if the accreditations
 22 that were done of the Health Care Corporation
 23 of St. John's in the ten-year period prior to
 24 the creation of Eastern Health, if those
 25 institution wide accreditations paid any

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1 particular attention to laboratory services or
 2 do you know to what extent they covered
 3 laboratory services?
 4 MR. WISEMAN:
 5 A. I understand that they would have been, you
 6 know, these accreditation processes would have
 7 looked at all aspects of the operation.
 8 MR. SIMMONS:
 9 Q. Uh-hm.
 10 MR. WISEMAN:
 11 A. So they would have looked at laboratories,
 12 they would have looked at other departments.
 13 As I understand that process, the--and I've
 14 learned this in recent months -
 15 MR. SIMMONS:
 16 Q. Yes.
 17 MR. WISEMAN:
 18 A. - that the most recent or the recent
 19 accreditation by--of Eastern Health through
 20 that process was back early last fall and
 21 there was a new set of standards applied to
 22 the laboratory in that accreditation process,
 23 as I understand it. The council had come up
 24 with a new set of standards for lab services
 25 and they were used in the accreditation

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1 process for Eastern.
 2 MR. SIMMONS:
 3 Q. Right. And had you been informed that in fact
 4 Eastern Health was part of a pilot by CCHSA
 5 for the implementation of a set of new more
 6 detailed standards for laboratory services?
 7 MR. WISEMAN:
 8 A. I was aware they were the first, I wasn't
 9 certain that they were designated a pilot.
 10 MR. SIMMONS:
 11 Q. Yes. So you were aware that they were among
 12 the first and are you aware that prior to
 13 this, for the period prior to this, the CCHSA
 14 accreditations paid much less attention to
 15 laboratory services than they did in the last
 16 accreditation?
 17 MR. WISEMAN:
 18 A. I would assume that they did because if they
 19 had new ones, that meant that they were new
 20 and improved, I assume.
 21 MR. SIMMONS:
 22 Q. Okay. And you've told us a little while ago
 23 that the Province is now going to pursue some
 24 form of accreditation for laboratories in
 25 Newfoundland and Labrador.

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1 MR. WISEMAN:
 2 A. That's true.
 3 MR. SIMMONS:
 4 Q. And I presume that would be something separate
 5 and apart from the general accreditation of
 6 the institution but would be directed
 7 particularly towards health care laboratories,
 8 would it?
 9 MR. WISEMAN:
 10 A. It would be, yes.
 11 MR. SIMMONS:
 12 Q. And you're aware that such accreditation
 13 exists in Ontario?
 14 MR. WISEMAN:
 15 A. Yes.
 16 MR. SIMMONS:
 17 Q. And are you aware that it exists in some form
 18 in British Columbia and perhaps in other parts
 19 of the country?
 20 MR. WISEMAN:
 21 A. I understood in other jurisdictions it existed
 22 as well, but I wasn't certain which ones.
 23 MR. SIMMONS:
 24 Q. Okay. When did the consideration of looking
 25 at provincial accreditation for hospital

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1 laboratories first come up? When did
 2 government start to think and talk about this
 3 topic?
 4 MR. WISEMAN:
 5 A. As a result of this, our discussion internally
 6 in recent months around ER/PR, what happened
 7 within Eastern Health and what we might want
 8 to do to strengthen diagnostic services on a
 9 go-forward basis.
 10 MR. SIMMONS:
 11 Q. Right, so it's something that arose out of
 12 this experience, rather than being under
 13 consideration at any time earlier?
 14 MR. WISEMAN:
 15 A. Yes, now it may have been discussed at some
 16 prior time within certain circles, but clearly
 17 it wasn't a part of any discussion that I was
 18 ever a part of until recently when we made the
 19 decision to do it.
 20 MR. SIMMONS:
 21 Q. So would your expectation be that in a similar
 22 way to the way the institution benefits from
 23 recommendations from an institution-wide
 24 accreditation, that laboratories in this
 25 province will benefit, and quality will

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1 benefit from having a provincial accreditation
 2 system that provides constructive
 3 recommendations to it?
 4 MR. WISEMAN:
 5 A. That would have been the objective here, yes.
 6 MR. SIMMONS:
 7 Q. And that up until now, well, even today, our
 8 laboratories in the province don't have that
 9 benefit because they don't have that
 10 provincial accreditation system?
 11 MR. WISEMAN:
 12 A. That's true.
 13 MR. SIMMONS:
 14 Q. Okay. Now I'm going to suggest that another
 15 source of ensuring quality in environment-like
 16 laboratory services is professional
 17 accreditation for the people that do the work,
 18 people like laboratory technologists. I have
 19 to join the Law Society to be here and they
 20 have standards that I have to meet and I can
 21 be disciplined by them if someone makes a
 22 complaint. Nurses have similar associations.
 23 Physiotherapists -- we can name many. Do
 24 laboratory technologists have that level of
 25 standard setting governance in this province?

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1 MR. WISEMAN:
 2 A. They're not a self-regulated body in this
 3 province.
 4 MR. SIMMONS:
 5 Q. No, okay. Does the provincial government have
 6 any licensing of or other form of regulation
 7 of laboratory technologists in the province?
 8 MR. WISEMAN:
 9 A. As I understand it, the employers in the
 10 province require laboratory technologists to
 11 be registered with the Canadian --
 12 MR. SIMMONS:
 13 Q. Yes.
 14 MR. WISEMAN:
 15 A. There's a national association. I forget the
 16 name of it now.
 17 MR. SIMMONS:
 18 Q. Yes.
 19 MR. WISEMAN:
 20 A. But I understand employers as a condition of
 21 employment require people to be eligible for
 22 registration for that body.
 23 MR. SIMMONS:
 24 Q. All right, and -- so in Newfoundland and
 25 Labrador then, there's no legislative or

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1 statutory system of governance for laboratory
 2 technologists that requires that they have any
 3 particular qualification or meet any
 4 particular standard in order to work in the
 5 province?
 6 MR. WISEMAN:
 7 A. That would be dictated by the employers.
 8 MR. SIMMONS:
 9 Q. Is there any consideration being given to
 10 developing any kind of professional regulation
 11 that the province has some role in for
 12 laboratory technologists?
 13 MR. WISEMAN:
 14 A. There is. There's been an effort and request
 15 by -- there's a group of technologists who
 16 have organized themselves in recent year to --
 17 in fact, some of the preliminary work may go
 18 back before then, but discussions I've had
 19 with them date back about a year or so ago
 20 when I was approached by a lady who was
 21 representing that group to have a conversation
 22 like that about pursuing that kind of
 23 regulatory structure, and one of the things
 24 that we're currently looking at right now is
 25 there's a number of disciplines in the

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1 province who, in practise, don't have that
 2 kind of regulatory structure. Some of them
 3 are small groups, some of them are large
 4 groups, and we have a large number that
 5 already exists and are structured around their
 6 own legislation like that now. I have
 7 officials in the Department as we speak
 8 reviewing a process to create an umbrella
 9 piece of legislation that might encompass a
 10 variety of disciplines that might be regulated
 11 in that fashion. Not every discipline has the
 12 mechanisms in place to administer their own
 13 regulatory regime.
 14 MR. SIMMONS:
 15 Q. Right.
 16 MR. WISEMAN:
 17 A. There's significant costs associated with it,
 18 and there's capacity issues with respect to
 19 discipline and others, so we're looking at how
 20 we might do that now with a view of having an
 21 umbrella piece of legislation that might
 22 encompass a variety of disciplines that are
 23 not now registered and have expressed some
 24 interest in, and a couple that we may want to
 25 do anyway.

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1 MR. SIMMONS:
 2 Q. Now you've told us that the health care
 3 institutions in this province will only employ
 4 laboratory technologists who have passed the
 5 national examination with their national
 6 organization, so I'm not in any way
 7 questioning any of the qualifications of our
 8 technologists, but would you agree with me
 9 that having a professional association for a
 10 group like that tends to promote things like
 11 education, research, setting of carefully
 12 considered standards for their work?
 13 MR. WISEMAN:
 14 A. They tend to do, yes.
 15 MR. SIMMONS:
 16 Q. Now aside from a system of accreditation of
 17 laboratories or some provincial system of
 18 licensing for technologists, is there any
 19 other legislation or government regulation of
 20 any sort that exists now that says what types
 21 of standards a hospital laboratory is supposed
 22 to meet?
 23 MR. WISEMAN:
 24 A. Not that I'm aware of.
 25 MR. SIMMONS:

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1 Q. Okay. Now in fairness, on the federal side,
 2 Health Canada has various regulations that
 3 apply nationally, but on the provincial level,
 4 you're not aware of anything which sets any
 5 particular standards for any of the laboratory
 6 services that are delivered?
 7 MR. WISEMAN:
 8 A. Not that I'm aware of, no. That doesn't
 9 necessarily mean they don't exist, but I'm not
 10 aware that they do.
 11 MR. SIMMONS:
 12 Q. Right, okay. So sources then of quality
 13 initiatives for laboratory would include
 14 accreditation, would include having a
 15 professional association if there were some
 16 form of Government regulation -- I'm not
 17 saying that there needs to be, but just
 18 identifying that you're not aware of any. I'm
 19 going to suggest another source are things
 20 like peer and quality reviews that we've
 21 discussed earlier. So would you agree with me
 22 that that's a source of means of identifying
 23 areas for quality initiatives and quality
 24 improvements?
 25 MR. WISEMAN:

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1 A. Could be, yes.
 2 MR. SIMMONS:
 3 Q. In this case, we know that for the laboratory
 4 at Eastern Health at the General Hospital
 5 site, that we had those two peer reviews done
 6 in 2005 and renewed in 2006, produced in the
 7 recommendations that you had spoken about
 8 earlier?
 9 MR. WISEMAN:
 10 A. Yes.
 11 MR. SIMMONS:
 12 Q. Now I'm going to suggest that the other -- one
 13 other source of quality --
 14 THE COMMISSIONER:
 15 Q. Or non-peer reviews as Justice Dymond might
 16 say?
 17 MR. SIMMONS:
 18 Q. Yes. We'll call them external reviews, as Ms.
 19 Chaytor suggests.
 20 THE COMMISSIONER:
 21 Q. Thank you.
 22 MR. SIMMONS:
 23 Q. And I'm going to suggest another source, of
 24 course, is internal to the organizations
 25 themselves. So in a sense, there's a reliance

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1 on Eastern Health to take quality initiatives
 2 within its own organization, correct?
 3 MR. WISEMAN:
 4 A. That's true.
 5 MR. SIMMONS:
 6 Q. Yeah, and would you agree with me as well that
 7 the extent to which it can take its own
 8 quality initiatives would depend, at least in
 9 part, on the resources available to it to do
 10 that?
 11 MR. WISEMAN:
 12 A. Yes.
 13 MR. SIMMONS:
 14 Q. Now you mentioned in your main evidence that
 15 you had read the report -- the review of the
 16 laboratory that was done past December, the
 17 report delivered this past December by the
 18 Ontario Accreditation Program. I think the
 19 acronym is QMP-LS, Quality Management Program
 20 Laboratory Services, affiliated I believe with
 21 the Medical Association in Ontario.
 22 MR. WISEMAN:
 23 A. Uh-hm.
 24 MR. SIMMONS:
 25 Q. Do you know how that report came to be

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1 commissioned and if the Department played any
 2 role in obtaining it?
 3 MR. WISEMAN:
 4 A. I'm not certain. I don't know.
 5 MR. SIMMONS:
 6 Q. Okay. If I were to suggest that that had been
 7 an initiative of Eastern Health itself, would
 8 that be contrary to anything that you're aware
 9 of?
 10 MR. WISEMAN:
 11 A. Not that I'm aware of. Either way, I'm not
 12 really certain how it originated.
 13 MR. SIMMONS:
 14 Q. Okay. Now you've had occasion to read through
 15 that report, and you've referred already I
 16 think to some of the conclusions expressed at
 17 the end of it?
 18 MR. WISEMAN:
 19 A. Yes.
 20 MR. SIMMONS:
 21 Q. Has the Department at any time since this
 22 issue was first notified to it in July of
 23 2005, considered bringing in its own reviewers
 24 or having any kind of its own review done of
 25 the immunohistochemistry laboratory at Eastern

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1 Health?
 2 MR. WISEMAN:
 3 A. I can only speak to since I've been Minister
 4 in January of last year.
 5 MR. SIMMONS:
 6 Q. Yes.
 7 MR. WISEMAN:
 8 A. I know I haven't turned my head to that
 9 notion.
 10 MR. SIMMONS:
 11 Q. Right.
 12 MR. WISEMAN:
 13 A. The only thing i have done recently since I've
 14 read the report, I've had a conversation with
 15 my Deputy about my desire to explore with
 16 Eastern Health the possibility of having a --
 17 because some time has lapsed and we have now
 18 the report of December that you referenced a
 19 moment ago --
 20 MR. SIMMONS:
 21 Q. Yes.
 22 MR. WISEMAN:
 23 A. And in that there is a series of
 24 recommendations.
 25 MR. SIMMONS:

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1 Q. Yes.
 2 MR. WISEMAN:
 3 A. I've just recently had a discussion with my
 4 Deputy around my desire to have explored with
 5 Eastern Health the notion that we might have,
 6 you know, the individual who did the last
 7 review for them, to come back and provide a
 8 further update of the status of the
 9 implementation of the recommendations and how
 10 they're working, while at the same time having
 11 a look at the process of implementing the
 12 recommendations of what was in the December
 13 report as a progress on the work that had been
 14 done by those two reports previously.
 15 MR. SIMMONS:
 16 Q. Right, and the report that was done by the
 17 QMP-LS organization from Ontario, from reading
 18 the report, do you understand that to be an
 19 exercise of taking the standards that they
 20 would use if accrediting an Ontario laboratory
 21 and applying them against the laboratory here?
 22 MR. WISEMAN:
 23 A. That's what I understood.
 24 MR. SIMMONS:
 25 Q. And you've quoted from the report that their

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1 conclusion was that the Authorities could rely
 2 on the work of this laboratory and it was
 3 functioning at a level of a comparable
 4 laboratory in Ontario?
 5 MR. WISEMAN:
 6 A. I think there was three references I made from
 7 the report.
 8 MR. SIMMONS:
 9 Q. Yes.
 10 MR. WISEMAN:
 11 A. One was with respect to the comparable labs in
 12 Ontario. The other one was the IHC laboratory
 13 is producing good results which would be
 14 interpretable anywhere, and the administration
 15 -- the third one, the administration should be
 16 complimented at this time that IHC laboratory
 17 is operating at a high quality control ER/PR
 18 program. Those are my two quotes.
 19 MR. SIMMONS:
 20 Q. Does your Department, and you as Minister, now
 21 share that confidence?
 22 MR. WISEMAN:
 23 A. Yes.
 24 MR. SIMMONS:
 25 Q. And I presume that since you became Minister,

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1 and particularly since you focused your
 2 attention on this issue in May of 2007, had
 3 you had any lack of confidence in the work
 4 being done in that laboratory, that you would
 5 have acted?
 6 MR. WISEMAN:
 7 A. Yes.
 8 MR. SIMMONS:
 9 Q. And you have not had to?
 10 MR. WISEMAN:
 11 A. No.
 12 MR. SIMMONS:
 13 Q. Now you were asked a fair number of questions
 14 about the recommendations that had come from
 15 the external reviews done by Dr. Banerjee and
 16 Ms. Wegrynowski, and in the course of that you
 17 were shown a spreadsheet that's at P-050,
 18 please, and I believe that's one from April of
 19 2007, which I understand to be recommendations
 20 extracted from those two reports and progress
 21 on the implementation of those. Ms. Chaytor
 22 went through with you and identified each
 23 recommendation that was indicated as being
 24 something other than completed. Do you recall
 25 that?

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1 MR. WISEMAN:
 2 A. Yes.
 3 MR. SIMMONS:
 4 Q. I'm not going to go through them all, but I'm
 5 just going to point out -- take a look at a
 6 couple. The first one that's not marked
 7 completed is number five -- I'm sorry, the
 8 first one that's not marked completed is
 9 number three, which it says is being discussed
 10 at that point. It says, "Consideration to use
 11 rabbit monoclonal antibody SP-1 for ER
 12 testing", and I don't expect you to know
 13 anything about the technical side of all that,
 14 but if I were to suggest to you that at the
 15 time these reports were prepared, the SP-1
 16 antibody was relatively new that some labs
 17 were moving to, but most labs had not,
 18 including Dr. Banerjee's lab, and that the
 19 suggestion was that this lab consider moving
 20 towards it, would you consider that this was
 21 still only being discussed in 2007 to be a
 22 matter of concern to you?
 23 MR. WISEMAN:
 24 A. I mean, I -- it's difficult for me to -- as
 25 you're framing the question, it's incomplete

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1 information that I don't have, so obviously I
 2 wouldn't be able to draw a conclusion.
 3 MR. SIMMONS:
 4 Q. Right, okay, and number five, "Pathologists
 5 and educational and scientific conferences"
 6 and it says it's "ongoing". Now a
 7 recommendation like that to attend educational
 8 and scientific conferences, would you expect
 9 that that's ever complete or is that
 10 something that goes on forever?
 11 MR. WISEMAN:
 12 A. It'll always be ongoing.
 13 MR. SIMMONS:
 14 Q. So you wouldn't want to see it say complete as
 15 if that was not going to continue, as if that
 16 had been done and would not continue. Number
 17 six, "Pathologist assistants hired to
 18 standardize grossing procedures, and the
 19 current status is three hired to date, fourth
 20 to start in August '06", although this
 21 recommendation sheet is dated '07, and under
 22 completion date, it says, "Training started
 23 May, 2006". Now did you understand that these
 24 pathologist assistant positions were new ones
 25 in the province and that there had not

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1 previously been people carrying out the roles
 2 that these pathologist assistants carry out in
 3 a pathologist lab?
 4 MR. WISEMAN:
 5 A. I gathered that from the way it was written in
 6 the report itself that these would be new
 7 positions.
 8 MR. SIMMONS:
 9 Q. Right, so would it be reasonable to expect
 10 that there would be some period of training
 11 and implementation of new positions like that?
 12 MR. WISEMAN:
 13 A. As with any new position, I assume, yes.
 14 MR. SIMMONS:
 15 Q. So would it be any significant cause of
 16 concern if that training was still ongoing by
 17 April of 2007?
 18 MR. WISEMAN:
 19 A. Training is one of these things -- implicit in
 20 some of the other recommendations, training
 21 needs to be ongoing and continuous. So the
 22 training piece and continuing education is
 23 something that's always ongoing. The concern
 24 that I'd have would be if someone had been
 25 hired two years ago and they're still trying

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1 to be orientated to the Department and
 2 trained. So there's a reasonable time period
 3 that would be considered natural and normal
 4 for training to occur.
 5 MR. SIMMONS:
 6 Q. So this spreadsheet is dated April 26th, 2007.
 7 I believe you said it came to your Department
 8 around the end of May in 2007.
 9 MR. WISEMAN:
 10 A. The one that I had indicated came to the -- a
 11 spreadsheet did come to the Department.
 12 MR. SIMMONS:
 13 Q. Oh, I'm sorry, yes --
 14 MR. WISEMAN:
 15 A. The end of May, and the one that I received
 16 was dated in 2006.
 17 MR. SIMMONS:
 18 Q. Right. So from that point on up to the
 19 current day, have you or the people in your
 20 Department had any concern about the adequacy
 21 of Eastern Health's actions in respect of the
 22 recommendations that came from those external
 23 review reports?
 24 MR. WISEMAN:
 25 A. I don't know if anyone has taken each one of

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1 these 52 recommendations and recently went
 2 through them and wanted to know the status of
 3 them.
 4 MR. SIMMONS:
 5 Q. Yeah.
 6 MR. WISEMAN:
 7 A. I commented a moment ago in your -- that I had
 8 a recent discussion with my Deputy around, you
 9 know, wanting maybe to have a conversation
 10 with Eastern Health with respect to looking at
 11 having someone review the recommendations.
 12 MR. SIMMONS:
 13 Q. Uh-hm.
 14 MR. WISEMAN:
 15 A. To see how successfully they'd been
 16 implemented, and marry then with the
 17 recommendations of the accreditation in
 18 December, but beyond that I haven't had a
 19 discussion around these individual
 20 recommendations.
 21 MR. SIMMONS:
 22 Q. Yeah, it's now April, 2008.
 23 MR. WISEMAN:
 24 A. Yeah.
 25 MR. SIMMONS:

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1 Q. And you became aware of at least what the
 2 recommendations were in May of 2007. I
 3 presume that had there been any kind of
 4 concern about whether the recommendations had
 5 been dealt with in a manner sufficient to
 6 allow that lab to continue operating, that
 7 there would have been some action taken by
 8 your Department and by you long before this?
 9 MR. WISEMAN:
 10 A. As I've already indicated in evidence here,
 11 the understanding that I was given last year
 12 in May was that the recommendations had been
 13 implemented.
 14 MR. SIMMONS:
 15 Q. Uh-hm, okay. I had some questions for you
 16 about the communication issues with patients,
 17 and first of all, I think we should try and
 18 make it clear that did you at any point ever
 19 believe or have it suggested to you that
 20 either of the four regional health Authorities
 21 had ever decided not to communicate any
 22 information about retesting to the patients
 23 affected, to the individual patients?
 24 MR. WISEMAN:
 25 A. My understanding was up -- well, the early

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1 part of June last year, that all patients had
 2 been contacted.
 3 MR. SIMMONS:
 4 Q. Yes.
 5 MR. WISEMAN:
 6 A. So the notion that the Boards would have
 7 contemplated or had a discussion around not
 8 doing it, I hadn't given it any thought up to
 9 that point.
 10 MR. SIMMONS:
 11 Q. No, and neither has it ever been indicated to
 12 you that at any point along the way there was
 13 any decision made that there was a group of
 14 patients who we got test results for, but
 15 we're not going to contact them?
 16 MR. WISEMAN:
 17 A. I think there's been some discussion, as I've
 18 since learned, that there were some initial
 19 priorities attached to contacting those who
 20 had their test results changed.
 21 MR. SIMMONS:
 22 Q. Uh-hm.
 23 MR. WISEMAN:
 24 A. And then there was a discussion around
 25 focusing on those that were still alive versus

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1 making contact with the families of the
 2 deceased patients.
 3 MR. SIMMONS:
 4 Q. Uh-hm.
 5 MR. WISEMAN:
 6 A. So there was some -- as I understand it now,
 7 some discussions around what the sequence of
 8 things would be, what calls would be made and
 9 what sequence.
 10 MR. SIMMONS:
 11 Q. Yes. So the issues -- I'm going to suggest
 12 that the issues, and there definitely are
 13 issues, there are important and serious issues
 14 that have come out of the whole communication
 15 piece to the patients, and issues which a lot
 16 of lessons have to be learned from. I'm going
 17 to suggest to you that the issues that come
 18 out of it are ones of the effectiveness of the
 19 process, not what was intended to be achieved
 20 by the process, because what was intended to
 21 be achieved was to communicate information to
 22 all the patients who were affected. The
 23 problem is that the effectiveness of how that
 24 was carried out has not been what was
 25 intended. Is that a fair statement? Would

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1 you agree with that as being your
 2 understanding of what happened?
 3 MR. WISEMAN:
 4 A. To the extent that I would acknowledge that I
 5 have no indication that anyone had a clear
 6 calculated decision not to call certain
 7 people, but in terms of process, I'm not sure
 8 that I necessarily agree with how you're
 9 trying to characterize the actions here, but -
 10 -
 11 THE COMMISSIONER:
 12 Q. I'm sorry, I maybe have misunderstood what the
 13 question was, but Mr. Simmons, are you putting
 14 to the witness that there always was an
 15 intention to contact all patients, including
 16 deceased?
 17 MR. SIMMONS:
 18 Q. You're correct, Madam Commissioner, if we
 19 leave aside the issue of the --
 20 THE COMMISSIONER:
 21 Q. The deceased, for the moment.
 22 MR. SIMMONS:
 23 Q. All patients who had --
 24 THE COMMISSIONER:
 25 Q. So we're talking now about all living

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1 patients.
 2 MR. SIMMONS:
 3 Q. Who had a retest result to be communicated to
 4 them. You are correct, the deceased is a
 5 separate issue and that got -- the decision
 6 about contacting the decision got made. All
 7 the deceased families, or making the
 8 information available to them got made later,
 9 but for the living patients, my understanding
 10 from everything that I've heard and seen is
 11 that the intention was always to contact every
 12 living patient who had a retest results to let
 13 them know either that they had been retested
 14 and there was no change, or they had been
 15 retested and there was a change, and that
 16 different means of communication were going to
 17 be used to effect those things.
 18 THE COMMISSIONER:
 19 Q. And the implication of the way you phrase the
 20 question is that they would be contacted after
 21 the retest was done?
 22 MR. SIMMONS:
 23 Q. Well, the --
 24 THE COMMISSIONER:
 25 Q. Because you said contacted to say, "You have

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1 been retested and".
 2 MR. SIMMONS:
 3 Q. Yes.
 4 THE COMMISSIONER:
 5 Q. That's the difficulty with the question.
 6 There are so many little variations within it.
 7 MR. SIMMONS:
 8 Q. Well, the point is there was no group of
 9 patients, living patients, for whom there was
 10 a decision made that we're not going to
 11 contact them with the results?
 12 MR. WISEMAN:
 13 A. Well, just -- I don't want to suggest
 14 something that may or may not have happened,
 15 but the picture before us is that initially I
 16 was advised that all patients were contacted.
 17 MR. SIMMONS:
 18 Q. Yes.
 19 MR. WISEMAN:
 20 A. So therefore, I would assume from that then
 21 the decision had been made to call all
 22 patients because the advice I was given was
 23 that they all were.
 24 MR. SIMMONS:
 25 Q. Uh-hm.

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1 MR. WISEMAN:
 2 A. In subsequently finding out that they were not
 3 all contacted -- in fact, I gave evidence
 4 earlier today to suggest that up until
 5 recently they were not all contacted. I have
 6 no way of knowing why they weren't.
 7 MR. SIMMONS:
 8 Q. Uh-hm.
 9 MR. WISEMAN:
 10 A. And so whether there was a conscious decision
 11 made to postpone communication with a certain
 12 group or not, I don't -- really don't know.
 13 Because of the conflict here, as I've just
 14 described it, is that if I was working from an
 15 assumption last year in May that they all
 16 were, at that point in time if you asked me
 17 that question, I would have said, "Well,
 18 obviously they intended to call everybody
 19 because everybody got called."
 20 MR. SIMMONS:
 21 Q. Um-hm.
 22 MR. WISEMAN:
 23 A. Today not everybody is called or was called
 24 and I have no idea why they weren't. And so I
 25 can't tell you whether or not that I'm

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1 comfortable saying that there was no decision
 2 made to leave out a group or to include a
 3 group.
 4 MR. SIMMONS:
 5 Q. Okay. Now, I had some--I wanted to talk to
 6 you a little bit, too, about the process of
 7 initially identifying those patients who had
 8 samples who were to be retested. And I know
 9 you weren't the Minister of Health at that
 10 time, but do you--have you had some
 11 understanding or has it been explained to you
 12 about what some of the steps were that had to
 13 be taken to identify those patients?
 14 MR. WISEMAN:
 15 A. The steps, no, I don't. As I understood it,
 16 the intent was to identify those that had
 17 negative results during that period of 1997 to
 18 2005.
 19 MR. SIMMONS:
 20 Q. Right.
 21 MR. WISEMAN:
 22 A. What that entailed to actually identify those
 23 numbers I have no idea, nor have I asked
 24 because I just assumed there was a process.
 25 MR. SIMMONS:

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1 Q. Right. You were aware, though, that they were
 2 patients from all regions of the province?
 3 MR. WISEMAN:
 4 A. Yes.
 5 MR. SIMMONS:
 6 Q. And from a variety of institutions and boards
 7 that existed prior to the amalgamations of
 8 2005?
 9 MR. WISEMAN:
 10 A. And they all would have had their initial test
 11 done at the same site.
 12 MR. SIMMONS:
 13 Q. Yes. And but that the--were you aware that
 14 the samples would have been prepared at
 15 various -
 16 MR. WISEMAN:
 17 A. Yes.
 18 MR. SIMMONS:
 19 Q. - facilities in the province, transported to
 20 the laboratory at the General Hospital site at
 21 which a slide was prepared and then the slides
 22 gone back to those other institutions where
 23 the pathologist would read the results of the
 24 slides?
 25 MR. WISEMAN:

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1 A. I became aware of that, yes.
 2 MR. SIMMONS:
 3 Q. Yeah, okay. So that complete records of those
 4 testing transactions would not have existed in
 5 one place in 2005 when it was necessary to try
 6 to identify who had had a test done and what
 7 the results of those tests were? Were you
 8 aware of that?
 9 MR. WISEMAN:
 10 A. If all of the tests were done at one site, the
 11 record of that test would have been contained
 12 at that site. The originating specimens would
 13 have come from a variety of locations from
 14 within the other three authorities, but the
 15 actual initial tests would have been done at
 16 one site, so there would have been a
 17 centralized record keeping of the tests
 18 themselves.
 19 MR. SIMMONS:
 20 Q. Right.
 21 MR. WISEMAN:
 22 A. I assume.
 23 MR. SIMMONS:
 24 Q. Yes. And are you aware that the results of
 25 reading the slides and determining whether the

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1 tests were positive or negative would be
 2 contained in the records at the various
 3 institutions from which the samples originated
 4 and not at the central laboratory testing
 5 site?
 6 MR. WISEMAN:
 7 A. They went back there for reporting and -
 8 MR. SIMMONS:
 9 Q. Yeah. So in order to do that initial patient
 10 identification piece it was necessary to
 11 involve all locations from which the samples
 12 had been reported? In order to identify those
 13 tests which had been negative?
 14 MR. WISEMAN:
 15 A. Yes (unintelligible) yes.
 16 MR. SIMMONS:
 17 Q. Okay. And even within the St. John's area
 18 initially in '97 the different acute care
 19 hospitals in St. John's maintained separate
 20 electronic record keeping systems? You're
 21 familiar with the Meditech system, I guess?
 22 MR. WISEMAN:
 23 A. Some knowledge -
 24 MR. SIMMONS:
 25 Q. They probably had that in Clarendville when you

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1 were there?
 2 MR. WISEMAN:
 3 A. Some knowledge of it.
 4 MR. SIMMONS:
 5 Q. And that were you aware that St. Clare's, the
 6 Grace and the General each had their own
 7 separate Meditech system and which didn't work
 8 exactly the same way and that once the--
 9 eventually the hospitals merged, the Meditech
 10 system merged and operated on a go forward
 11 basis rather than merging historical data,
 12 were you aware of that level of complexity in
 13 it?
 14 MR. WISEMAN:
 15 A. I mean, as you're sharing it now it makes some
 16 sense, but I didn't get into that level of
 17 detail last year.
 18 MR. SIMMONS:
 19 Q. Right, okay. So would it surprise you, then,
 20 that there would have been a level of
 21 complexity involved in even initially
 22 identifying which tests had produced a
 23 negative result in order to try to identify
 24 everybody that needed to be retested?
 25 MR. WISEMAN:

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1 A. Complexity defined by multiple data sources,
 2 yes.
 3 MR. SIMMONS:
 4 Q. Similarly, when it comes to notifying patients
 5 of the results that all four regional health
 6 authorities would have had to have been
 7 involved in that process? In order to know
 8 where the patient was, how to contact them,
 9 what their address was, phone number, who the
 10 physician was who was dealing with them now,
 11 in order to be able to carry out that process
 12 it required steps to be taken or measures to
 13 be taken by all four regional health
 14 authorities?
 15 MR. WISEMAN:
 16 A. Yes. I now understand that the other
 17 authorities were involved in that initial
 18 process, yes.
 19 MR. SIMMONS:
 20 Q. Right. And did you understand that while some
 21 of the patients who had been retested may
 22 still have been under the care of physicians
 23 at the Cancer Centre which by 2006, I think,
 24 was part of Eastern Health, but previously had
 25 been a separate institution, many patients had

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1 been discharged from the care of an oncologist
 2 or a cancer physician and were being followed
 3 in other parts of the province, either by a
 4 family physician or some other, some other
 5 doctor? Were you aware of that situation?
 6 MR. WISEMAN:
 7 A. Yes, I would understand that would be the
 8 situation.
 9 MR. SIMMONS:
 10 Q. Yeah. And that factors like that created a
 11 layer of complexity when it came to
 12 identifying and tracking down and getting the
 13 information to either the responsible
 14 physician if there was a change in test result
 15 or the patient if there was no change in test
 16 result and that all the information necessary
 17 to affect that wasn't readily available in
 18 Eastern Health's records that reliance on
 19 other sources had to be used?
 20 MR. WISEMAN:
 21 A. I understand that, yes.
 22 MR. SIMMONS:
 23 Q. Now, when in, I guess it was June of 2007 you
 24 involved Mr. Thompson and the Newfoundland
 25 Labrador Centre for Health Information, NLCHI,

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1 I think they call it, in the database project,
 2 was that something that you initiated and
 3 tasked them to do, did that originate with
 4 you?
 5 MR. WISEMAN:
 6 A. Originated as--it grew out of the discussion
 7 that Mr. Thompson and I had, yes.
 8 MR. SIMMONS:
 9 Q. Okay. And Mr. Thompson then, I believe -
 10 MR. WISEMAN:
 11 A. It grew out of--just elaborate on that
 12 particular point.
 13 MR. SIMMONS:
 14 Q. Yeah.
 15 MR. WISEMAN:
 16 A. The initial thinking was that we would--and I
 17 gave evidence of this earlier, that we had a
 18 couple of officials from my Department go in
 19 to Eastern Health to sit down and to look at
 20 the records themselves and see if they could
 21 piece together the audit trail, the trail of
 22 documentation to be able to validate the
 23 information around communication. And when
 24 they came back to the office and provided an
 25 update, they weren't--you know, it was based

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1 on the advice that they had and the indication
 2 that they provided is that there was no way
 3 that they had an ability to be able to just to
 4 go in and do that kind of audit because, you
 5 know, the information was recorded in a
 6 multiple of fashions.
 7 MR. SIMMONS:
 8 Q. Yes.
 9 MR. WISEMAN:
 10 A. And it really hadn't been--even though it may
 11 have been stored in a variety of locations
 12 around the province, when it got pulled
 13 together, it didn't get pulled together in any
 14 kind of structured format and recorded in any
 15 kind of structured format to allow anyone to
 16 do an audit of it. So there was a recognition
 17 that we needed to have a reconstruction here
 18 of the database and the people with that kind
 19 of expertise was the centre.
 20 MR. SIMMONS:
 21 Q. Okay. So at that point the information about
 22 who had been contacted, when and how and what
 23 the results were hadn't been collected into a
 24 single database and it was the Centre for
 25 Health Information personnel with, under some

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1 direction from Mr. Thompson who were asked by
 2 your Department to perform that task?
 3 MR. WISEMAN:
 4 A. Yes.
 5 MR. SIMMONS:
 6 Q. Yeah. And are you aware that at that time
 7 Eastern Health had been moving towards doing
 8 an analysis of this data itself but in light
 9 of the initiative taken by your Department
 10 agreement was reached between the two that
 11 NLCHI would do the work and share the results
 12 with Eastern Health?
 13 MR. WISEMAN:
 14 A. I hadn't been aware of that. It quite
 15 possibly happened, but that's something Robert
 16 Thompson would have had a discussion with the
 17 CEO of Eastern at that time.
 18 MR. SIMMONS:
 19 Q. Right. And from that point on, then, the
 20 collection of the data from the original
 21 sources at Eastern Health and the other health
 22 authorities was undertaken primarily by NLCHI,
 23 who were the source that were compiling that
 24 data?
 25 MR. WISEMAN:

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1 A. They were doing the compiling, but the source
 2 was the authorities.
 3 MR. SIMMONS:
 4 Q. Yes.
 5 MR. WISEMAN:
 6 A. They were basically relying on the source of
 7 information from the authorities to do that.
 8 MR. SIMMONS:
 9 Q. Right. And through that process, which has
 10 continued since June of 2007 up until even
 11 today and I presume continuing on, it has been
 12 the Centre for Health Information, the people
 13 working with it whom have been relied upon to
 14 identify any gaps in notification and bring to
 15 the attention of the authorities any people
 16 who they determine or suspect have not already
 17 been notified?
 18 MR. WISEMAN:
 19 A. That's true.
 20 MR. SIMMONS:
 21 Q. Correct. So it has, from June the authorities
 22 have been looking to the work that NLCHI has
 23 been doing to identify those people so that
 24 they could then deal with the contact
 25 information?

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1 MR. WISEMAN:
 2 A. Exactly.
 3 MR. SIMMONS:
 4 Q. Right, okay. And it appears then that since
 5 there was a press release in November which
 6 identified a number of people who had issues
 7 about whether they had been--for which whom
 8 there were issues about whether they had been
 9 contacted and another press release in
 10 February and a recent one now that it has
 11 taken some time for NLCHI to do the work to
 12 identify those people?
 13 MR. WISEMAN:
 14 A. That's right.
 15 MR. SIMMONS:
 16 Q. Okay. And as soon as NLCHI has been able to
 17 identify those people, those about whom there
 18 are questions, have the authorities been
 19 notified immediately so that they could then
 20 try to act on making that contact?
 21 MR. WISEMAN:
 22 A. That's what I understand, yes.
 23 MR. SIMMONS:
 24 Q. Okay. Can we have a look at P-0244, please?
 25 This was the draft of the technical briefing

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1 that Ms. Chaytor showed you earlier. This one
 2 is dated February 19th, 2008. And there's a
 3 later one that we looked at also from two days
 4 later, on February 21st. Ms. Chaytor referred
 5 you to a table in it and I don't remember
 6 which page, but I'm going to guess that it's
 7 somewhere down around page 20. 21.
 8 CHAYTOR, Q.C.:
 9 Q. They were both the same dated, February 19th -
 10 MR. SIMMONS:
 11 Q. Oh, are they, okay. Well, this particular one
 12 here, February 21, has got a table and you
 13 were shown the four lines that are shaded
 14 there which say, "Unable to contact." "No
 15 contact made." and "Unsure if contact was
 16 made."
 17 MR. WISEMAN:
 18 A. Um-hm.
 19 MR. SIMMONS:
 20 Q. And at that point the numbers in those columns
 21 are 24, 53 and 9, which I add up to be about
 22 86 people, 86 questions? You see that?
 23 MR. WISEMAN:
 24 A. I see that, yes, yeah.
 25 MR. SIMMONS:

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1 Q. Okay. And then when you go to 0253, please,
 2 and there is a -
 3 UNKNOWN SPEAKER:
 4 Q. (Inaudible).
 5 MR. SIMMONS:
 6 Q. 0253, yes. Sorry. Now, this one is attached
 7 to an e-mail dated February 21st and the last
 8 one we looked at was February 19th.
 9 MR. WISEMAN:
 10 A. Um-hm.
 11 MR. SIMMONS:
 12 Q. And there's--I'm going to have to go down
 13 until I find the slide that you referred to
 14 earlier. I may have missed it. Here we are,
 15 page 20. It says 49 people were not contacted
 16 by a health authority or it is uncertain if
 17 they were contacted.
 18 MR. WISEMAN:
 19 A. Yes.
 20 MR. SIMMONS:
 21 Q. You see that, page 20?
 22 MR. WISEMAN:
 23 A. Yes.
 24 MR. SIMMONS:
 25 Q. Of people who are in that category of not

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1 contacted or uncertain when they have
 2 contacted appears to have been reduced quite a
 3 bit from the first report we looked at dated
 4 February 19th until this one that we see here,
 5 which is attached to an e-mail from February
 6 21st?
 7 MR. WISEMAN:
 8 A. Yes.
 9 MR. SIMMONS:
 10 Q. Do you know how long in advance the health
 11 authorities were given the information
 12 contained in the first of those reports about
 13 the number of people that NLCHI had determined
 14 had not been contacted?
 15 MR. WISEMAN:
 16 A. I'm not certain, actually.
 17 MR. SIMMONS:
 18 Q. It would surprise you if it was only a very
 19 short time before that, before the 19th of
 20 February that they were given that
 21 information?
 22 MR. WISEMAN:
 23 A. I mean, I understood as they were finding
 24 information that it was being relayed to the
 25 authorities so that -

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1 MR. SIMMONS:
 2 Q. Do you know what happened between the 19th and
 3 the 21st for the number of people who were not
 4 contacted as being reported in the report to
 5 be reduced in the way that it was?
 6 MR. WISEMAN:
 7 A. I don't know specifically. I suspect it was a
 8 process that was ongoing, as they identified
 9 more documentation to confirm that contact had
 10 been made, they came off the un-contacted
 11 list.
 12 MR. SIMMONS:
 13 Q. Okay. So you suspect that as the first draft
 14 report went out, the health authorities were
 15 able to then respond to NLCHI, which resulted
 16 in NLCHI changing the number -
 17 MR. WISEMAN:
 18 A. Right.
 19 MR. SIMMONS:
 20 Q. - of people that came off the list?
 21 MR. WISEMAN:
 22 A. Yeah, that sounds like a logical answer, but I
 23 can't speak to it directly.
 24 MR. SIMMONS:
 25 Q. Okay.

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1 THE COMMISSIONER:
 2 Q. Wait now, I understood we're talking two
 3 different things here and I'm not sure. I was
 4 understanding the witness to say that he
 5 believed that Eastern Health was advised as
 6 persons were discovered to have not been.
 7 MR. SIMMONS:
 8 Q. Yes.
 9 THE COMMISSIONER:
 10 Q. You seem to be asking a question about whether
 11 or not Eastern Health, based on Eastern Health
 12 not -
 13 MR. SIMMONS:
 14 Q. The authorities.
 15 THE COMMISSIONER:
 16 Q. - having the information or other authorities
 17 not having the information until it came out
 18 in this form.
 19 MR. SIMMONS:
 20 Q. Um-hm.
 21 THE COMMISSIONER:
 22 Q. That to me is a different answer to a
 23 different question, so which one is it?
 24 MR. SIMMONS:
 25 Q. Okay. Well, we do have--we know in the first

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1 report we added up to be something like 80
 2 people were in these categories of not
 3 contacted or uncertain if they were contacted
 4 and on the second of the reports it's down to
 5 49?
 6 MR. WISEMAN:
 7 A. Yes.
 8 MR. SIMMONS:
 9 Q. And I've asked you if you could provide any
 10 explanation or if you have any knowledge of
 11 what process might have happened between the
 12 two times to account for that change.
 13 MR. WISEMAN:
 14 A. And I said I don't really know exactly what
 15 happened. A logical answer would be that, you
 16 know, during that period they recognized or
 17 been able to provide the documentation to
 18 suggest that they had, in fact, been contacted
 19 so they weren't reported on this data as
 20 having been no contact.
 21 MR. SIMMONS:
 22 Q. Okay.
 23 MR. WISEMAN:
 24 A. And that's an assumption on my part because it
 25 sounds logical.

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1 MR. SIMMONS:
 2 Q. Okay. I guess we'll have to probably wait for
 3 Mr. Thompson or others in order to be able to
 4 clarify that. Okay. Now, I'm jumping around
 5 a bit because I'm trying to move through
 6 things as quickly as I can here. Last week
 7 when you were here, you were shown some
 8 briefing notes and materials that had gone to
 9 the Premier's office in August of 2006 and
 10 those had numbers in them as reported by
 11 Eastern Health concerning the number of
 12 patients who had a change in tests and a
 13 treatment change, the number who had a change
 14 in test and no treatment and various other
 15 numbers set out in it. Do you recall that?
 16 MR. WISEMAN:
 17 A. I was shown a briefing note to that effect,
 18 but I don't think it was the one in August of
 19 '06. I don't remember that being the one, but
 20 the information you're mapping out is
 21 information that I think I saw in a briefing
 22 note. The date of that briefing note, I'm not
 23 certain.
 24 MR. SIMMONS:
 25 Q. Okay, P-0172 please. This was the e-mail from

1 Marilyn McCormack to Moira Hennessey, 8 18
 2 2006 which I think is August 18th, 2006. And
 3 it says, "attached is the final copy of the
 4 above noted briefing note" and I'll just skip
 5 down a few pages and we can see here that it
 6 says, it's got the tables in it with different
 7 categories of patients and their results and
 8 various numbers included there.

9 MR. WISEMAN:

10 A. Yes.

11 MR. SIMMONS:

12 Q. If I go to the next page, second box, "patient
 13 ER/PR status changed from negative to
 14 positive, but no treatment recommends, 208".

15 MR. WISEMAN:

16 A. Yes.

17 MR. SIMMONS:

18 Q. Okay. And jump ahead, that's the information
 19 that was not included in the media briefing
 20 given by Eastern Health in December of 2006.

21 MR. WISEMAN:

22 A. Yes.

23 MR. SIMMONS:

24 Q. But we see from this briefing note that those
 25 numbers were known within the Department of

1 the media briefing on December 11, 2006 which
 2 included the 117 numbers which was treatment
 3 changes, but not these other numbers here.
 4 And that the media coverage following that was
 5 followed by people in your department, your
 6 officials in your department as well. Do you
 7 recall going through those documents and that
 8 being the situation?

9 MR. WISEMAN:

10 A. You're using some numbers now to show
 11 different--I need to--can you show me--you're
 12 asking me if the information -

13 MR. PRITCHARD:

14 Q. Excuse me, I'm just wondering, he's not
 15 referring to the evidence that was shown to
 16 Mr. Osborne, is he. I think he might be.

17 CHAYTOR, Q.C.:

18 Q. Because I didn't put this document to -

19 MR. SIMMONS:

20 Q. I'm sorry, I may be gone a stray there, Madam
 21 Commissioner. Well, let me suggest this to
 22 you, that prior to -

23 THE COMMISSIONER:

24 Q. Well, make sure I understand what's going on--
 25 Ms. Chaytor, you're confirming that you did

1 Health and gone to the Premier's office in
 2 August of 2006.

3 MR. WISEMAN:

4 A. Uh-hm.

5 MR. SIMMONS:

6 Q. And following the briefing by Eastern Health
 7 in December of 2006 which some numbers were
 8 released, but not that particular one, there
 9 was extensive media coverage of that briefing.
 10 I think you were shown some of it earlier.
 11 You recall that?

12 MR. WISEMAN:

13 A. The media briefing that was done in December
 14 2006?

15 MR. SIMMONS:

16 Q. Yes.

17 MR. WISEMAN:

18 A. Yes.

19 MR. SIMMONS:

20 Q. Okay. So, would you agree with me that from
 21 the information that we saw when Ms. Chaytor
 22 took you through the documents that the
 23 officials in the department had these numbers
 24 back in August of '06. They had the briefing
 25 materials that were used by Eastern Health for

1 not put this particular document to this
 2 witness, that was a document that was put
 3 before Mr. Osborne?

4 CHAYTOR, Q.C.:

5 Q. I think Mr. Coffey put that to Mr. Osborne. I
 6 didn't put that to this witness. I started
 7 with the briefing note that he would have had
 8 in his possession March 9 -

9 THE COMMISSIONER:

10 Q. Okay. And this predates this witness becoming
 11 Minister?

12 MR. SIMMONS:

13 Q. Yes, my apologies, Mr. Wiseman. I'm running
 14 together your evidence and -

15 MR. WISEMAN:

16 A. Your figures sounded half familiar, but then
 17 when you said about the August, I couldn't
 18 remember seeing that briefing note in this -

19 MR. SIMMONS:

20 Q. Well, we have it there now and that's the one
 21 from August that we saw at the time Mr.
 22 Osborne was Minister. He told us this was one
 23 that he wasn't aware of, but we have it here
 24 and this information was within your
 25 department.

1 MR. WISEMAN:
 2 A. Okay.
 3 MR. SIMMONS:
 4 Q. And we went through, I guess it was with him,
 5 as well, that the briefing materials prepared
 6 by Eastern Health for the December '06
 7 briefing were transmitted to officials within
 8 the Department of Health and that they
 9 monitored the media coverage afterwards.
 10 MR. PRITCHARD:
 11 Q. Commissioner, excuse me, I'm not sure why Mr.
 12 Simmons is persisting in this line of
 13 questioning. He's putting statements to the
 14 witness, is there any point of the witness
 15 responding to these.
 16 THE COMMISSIONER:
 17 Q. Well, I think what Mr. Simmons is putting to
 18 the witness is that whether he had knowledge
 19 of it or not, somebody in his department would
 20 have. Is that it?
 21 MR. SIMMONS:
 22 Q. And leading now to the point that after you
 23 became Minister, did you, at any time, become
 24 aware that the officials in your department
 25 had had this information with these numbers of

1 Q. Right.
 2 MR. WISEMAN:
 3 A. That's what I know as fact that was
 4 communicated to me at that time. So, that's
 5 the information that I had knowledge of .
 6 MR. SIMMONS:
 7 Q. Did you ever ask or investigate whether it was
 8 known to the officials in your department
 9 after December '06, immediately after when the
 10 media coverage took place, that the other
 11 information had not been communicated to the
 12 public by Eastern Health at that time?
 13 MR. WISEMAN:
 14 A. This was a file that I've also give evidence,
 15 the ER/PR file was not one that I was involved
 16 with or engaged with at that time. So, I
 17 wouldn't have had any reason to, I wasn't part
 18 of the process or part of any earlier
 19 discussions. I wasn't following the releases
 20 nor following--or part of the presentation
 21 that was made by the Eastern Health to the
 22 department officials prior to December.
 23 MR. SIMMONS:
 24 Q. Yes. When you became involved in the issue in
 25 May of '07, you were publicly critical of

1 test changes available to them prior to
 2 Eastern Health holding its media briefing in
 3 December of '06? Is that something that you
 4 became aware of.
 5 MR. PRITCHARD:
 6 Q. No, I don't either, have a problem with that
 7 question.
 8 MR. WISEMAN:
 9 A. When I became--in May month, I gave evidence
 10 earlier that I became Minister in January of
 11 '07 and I had a discussion in May of '07 with
 12 respect to ER/PR, the topic we're talking
 13 about here today. As I understood it at that
 14 time, there was information that was supplied
 15 in a briefing to the department before the
 16 media briefing in December by Eastern Health.
 17 So, there's a media briefing provided to the
 18 department at that time or a briefing rather
 19 and data provide to the department that was
 20 presented as the state of play at that point.
 21 And I found out at that particular point that
 22 the information that was released in a press
 23 briefing, I'm sorry, in December of '06 left
 24 out this piece.
 25 MR. SIMMONS:

1 Eastern Health for not having released this
 2 other information in December of '06.
 3 MR. WISEMAN:
 4 A. I was yes.
 5 MR. SIMMONS:
 6 Q. Yes. Did anyone from your department then
 7 draw to your attention or say to you, we knew
 8 they hadn't released this information?
 9 MR. WISEMAN:
 10 A. No, they didn't.
 11 MR. SIMMONS:
 12 Q. Did you ask or inquire as to anyone in your
 13 department had been aware of the fact that
 14 that information had not been released?
 15 MR. WISEMAN:
 16 A. I didn't ask the question directly, no.
 17 MR. SIMMONS:
 18 Q. Okay. Knowing that there was significant
 19 media coverage of that event in December of
 20 '06, can you conceive of any way--and knowing
 21 the way that officials in your department
 22 follow media coverage, is there any way that
 23 you could conceive of them not having been
 24 aware that Eastern Health had chosen not to
 25 release this more detailed information?

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1 MR. WISEMAN:
 2 A. I mean, I'd be speculating then and I can't do
 3 that because I don't know.
 4 MR. SIMMONS:
 5 Q. Right. Because you were publicly critical of
 6 Eastern Health about this.
 7 MR. WISEMAN:
 8 A. Yes.
 9 MR. SIMMONS:
 10 Q. Did you give any consideration to the role of
 11 the people in your own department and whether
 12 you should be looking at their role in not
 13 taking some action at that time to communicate
 14 more information to the public?
 15 MR. WISEMAN:
 16 A. It's a fair question that you pose, but my
 17 comment was about the people who did take an
 18 action and the people did actually release the
 19 information and the people who released the
 20 information were Eastern Health in December
 21 and it was their decision to release what they
 22 released and not to include some other pieces
 23 of information. And it was that decision that
 24 I was critical of. The issue that you're
 25 raising is whether or not that someone in my

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1 department also had knowledge that it hadn't
 2 been released and I don't know the answer.
 3 MR. SIMMONS:
 4 Q. Okay. Neither did you make any inquiries or
 5 neither did you consider whether that was
 6 something that you should inquire about -
 7 MR. WISEMAN:
 8 A. I didn't make the inquiry, no.
 9 MR. SIMMONS:
 10 Q. Okay. Now, in May of '07, around that time,
 11 you met with Mr. Tilley and others from
 12 Eastern Health, I believe, and you discussed
 13 what had happened with the media briefing in
 14 December of '06 and you've told us that you
 15 were told that Eastern Health had been acting
 16 or influenced or somehow limited by legal
 17 advice. I think that was the way that you
 18 described it.
 19 MR. WISEMAN:
 20 A. Yes.
 21 MR. SIMMONS:
 22 Q. Now, can you recall whether what you were told
 23 was--and the distinction here--that there had
 24 been legal advice not to release those numbers
 25 or whether you were told that it was because

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1 of outstanding litigation that they didn't
 2 release more numbers? Now, that may be a fine
 3 distinction, but there is a distinction there.
 4 MR. WISEMAN:
 5 A. And my--there is and I wouldn't be able tell
 6 you which of the two that was relevant here,
 7 nor do I know if actually the distinction was
 8 made. My characterization of it as being
 9 legal advice was that some--a lawyer acting in
 10 their interest, gave them some advice to--and
 11 that's inform--what they actually released in
 12 December.
 13 MR. SIMMONS:
 14 Q. Yes.
 15 MR. WISEMAN:
 16 A. The distinction that you're making, I'm not
 17 certain of that distinction. I'm not certain
 18 that we actually made that distinction in our
 19 discussion.
 20 MR. SIMMONS:
 21 Q. Would you have taken--whether what was told to
 22 you was that it was the existence of
 23 litigation that limited what they felt they
 24 could disclose or that it was specific advice
 25 from a lawyer, would you have even recognized

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1 any difference in that or would you have taken
 2 that to be the same thing?
 3 MR. WISEMAN:
 4 A. Probably not, to be honest with you. It's not
 5 a fine point of law that I probably would have
 6 recognized as being a major distinction, you
 7 know, in my world. I would have recognized
 8 that a lawyer gave them advice to either
 9 include something or not include something or
 10 they're putting out a release and they had
 11 legal advice as to what could be contained in
 12 that.
 13 MR. SIMMONS:
 14 Q. Now, we heard from Mr. Osborne when he was
 15 here that in different portfolios that he'd
 16 been in in government, he regarded as a fairly
 17 standard if there was an outstanding lawsuit
 18 to refrain from public comment about matters
 19 that were subject to litigation. And
 20 sometimes that's a fairly common conception,
 21 whether there's a real legal reason for it or
 22 not. And I'm going to suggest that what was
 23 actually told to you at that meeting was that
 24 we couldn't go and talk about everything
 25 because we don't do that when there's

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1 litigation. And you weren't told that we were
 2 advised by a lawyer in this case not to
 3 release this specific information.
 4 MR. WISEMAN:
 5 A. That's your suggest--I mean, I won't -
 6 MR. SIMMONS:
 7 Q. Can you say that one or the other is right or
 8 wrong?
 9 MR. WISEMAN:
 10 A. No, my--I still stand by my earlier comment
 11 that I understood from the comments made by
 12 Eastern that day and that they--what was in
 13 that release and what was in or not in that
 14 release was influenced by a legal opinion they
 15 had.
 16 THE COMMISSIONER:.
 17 Q. Mr. Simmons, just to make sure I understand
 18 the question, you're asking the witness
 19 whether or not he recalls whether the reason
 20 he was given was that specific advice had been
 21 sought in respect of this issue, as opposed to
 22 some generic belief that in these
 23 circumstances, this is what they did?
 24 MR. SIMMONS:
 25 Q. Correct, Madam Commissioner.

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1 THE COMMISSIONER:
 2 Q. And I'm understanding the witness to say you
 3 didn't make that distinction and you're
 4 unsure?
 5 MR. WISEMAN:
 6 A. The understanding that I had was on the basis
 7 of legal advice that they had.
 8 THE COMMISSIONER:
 9 Q. Okay.
 10 MR. WISEMAN:
 11 A. Whether it was the legal advice that was given
 12 to them in a generic way for all
 13 circumstances, such as these in the future, or
 14 whether it was legal advice with respect to a
 15 very specific case at hand, I don't know, but
 16 clearly we were talking about the very
 17 specific issue at hand and I wouldn't have
 18 made that distinction that this was a generic
 19 piece of advice given some years earlier.
 20 THE COMMISSIONER:
 21 Q. All right, thank you. Mr. Simmons, it's
 22 getting near the point for break. If you're
 23 close to completing, then we'll push on. If
 24 you're not, then we'll adjourn until the
 25 morning.

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1 MR. SIMMONS:
 2 Q. Two or three other things, it wouldn't take me
 3 too long, but since it's ten to five, it may
 4 be better to adjourn now and that way I can
 5 maybe be a little more focused on them in the
 6 morning.
 7 THE COMMISSIONER:
 8 Q. All right, thank you. Can I do the rounds of
 9 the room before we go because there is another
 10 witness who we do have to advise whether or
 11 not they show up at what time. Mr. Browne?
 12 MR. BROWNE:
 13 Q. I don't have my questions, I have about nine
 14 or ten questions relatively secluded to one
 15 area, so I don't anticipate being ten minutes,
 16 fifteen minutes.
 17 THE COMMISSIONER:
 18 Q. All right, Mr. Eaton? I'm not holding you to
 19 anything you say to me this afternoon, except
 20 a rough estimate. You can change your mind in
 21 the morning.
 22 EATON, Q.C.:
 23 Q. I don't believe we will have any questions.
 24 THE COMMISSIONER:
 25 Q. All right, thank you. Ms. Newbury?

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1 MS. NEWBURY:
 2 Q. I expect I'll probably be about twenty minutes
 3 or so.
 4 MS. TAYLOR:
 5 Q. My estimate would be similar to Mr. Browne's,
 6 ten or fifteen minutes.
 7 MR. PIKE:
 8 Q. I should be less than ten, Commissioner.
 9 THE COMMISSIONER:
 10 Q. All right.
 11 MR. PRITCHARD:
 12 Q. I'll be twenty, twenty-five minutes,
 13 Commissioner.
 14 THE COMMISSIONER:
 15 Q. Okay then, we can all judge ourselves
 16 accordingly. Thank you very much, I'm afraid,
 17 Minister, we're going to have to ask you to
 18 come back in the morning. 9:30?
 19 Upon conclusion at 4:55 p.m.

CERTIFICATE

1
2 I, Judy Moss, hereby certify that the foregoing is
3 a true and correct transcript in the matter of the
4 Commission of Inquiry on Hormone Receptor Testing,
5 heard on the 14 day of April, A.D., 2008 before the
6 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 14th day of April, A.D., 2008
13 Judy Moss

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