COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 14, 2008

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

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

Peter Browne/Jane Hennebury . . . . . Doctors Kara Laing et al

Daniel Simmons . . . . . Eastern Regional Integrated
. . . . . Health Authority

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

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

LIST OF EXHIBITS

TABLE OF CONTENTS

THE COMMISSIONER:
Q. Please be seated. Ms. Chaytor?
MR. ROSS WISEMAN, EXAMINATION-IN-CHIEF BY SANDRA CHAYTOR, Q.C. (CONTINUED)
CHAYTOR, Q.C.:
Q. Thank you, Commissioner. Good morning, Mr. Wiseman.
MR. WISEMAN:
A. Good morning.
CHAYTOR, Q.C.:
Q. Commissioner, first thing this morning, there are five new exhibits that I would ask, please, to have entered. They are P- 0286 through to P-0290, inclusive.
THE COMMISSIONER:
Q. Okay.
CHAYTOR, Q.C.:
Q. And copies have been provided to Mr. Wiseman and to the counsel for the parties.
THE COMMISSIONER:
Q. All right, Exhibits P-0286 through to P- 0290 entered
EXHIBITS P-0286 THROUGH P-0290 ENTERED INTO EVIDENCE.
CHAYTOR, Q.C.:
Q. Mr. Wiseman, what percentage of the patients

Page 5

involved in the ER/PR retesting were patients of the other three health care authorities other than Eastern Health?

MR. WISEMAN:

A. I don't recall the--I'm not sure of the breakdown by region, but you're accurate in they would have been patients of each of the four regional health authorities. But as I recall it, the bulk of them were from the Eastern Region.

CHAYTOR, Q.C.:

Q. Okay, so more than 50 percent from the Eastern Region. Do you know if it was close to the 50/50 mark?

MR. WISEMAN:

A. It might--I would only be speculating. I don't really recall. That information is available.

CHAYTOR, Q.C.:

Q. Yes.

MR. WISEMAN:

A. But I don't recall it as we speak.

CHAYTOR, Q.C.:

Q. Okay. I'm wondering if any of the other health care authorities, we've heard how

Page 6

Eastern Health had input into information that went into your briefing notes and were contacted in terms of any information that was required on the issue. I'm wondering do you know whether or not the other three authorities were contacted for any information

MR. WISEMAN:

A. I couldn't say, I don't know.

CHAYTOR, Q.C.:

Q. Okay. If we could turn, please, to P-0287? Mr. Wiseman, last day I was asking you about your recollections for a meeting that occurred on or about June 14th, 2007, and we understood that this meeting involved CEOs and board chairs of the four regions. And what we have here in P-0287 is excerpts from minutes of Executive Management Meeting of Eastern Health. And this meeting was held June 13th, 2007. And it makes reference to the upcoming meeting under 1.6 on page 4.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. You have that? Okay. And it says here the CEO, and the CEO in this context would be the

Page 7

CEO of Eastern Health. "The CEO is scheduled to meet with the Deputy Minister of Health and Community Services, board chairs and CEOs," and we assume that's the board chairs and CEOs of the other regions, as well as the board chair of Eastern Health, "on June 14th, 2007 and requested input on key messages." And then there's a list of key messages in this document. And again, this is taken, and I understand this is not a document that you would have been familiar with prior to me showing this to you this morning. This is an Eastern Health document. But my only purpose is to see whether or not any of those issues that are enumerated here, in fact, were discussed at the meeting on June 14th, 2007 and to see if this jogs your memory as to what the nature of the discussion was. And even though it doesn't mention--it says in the heading it's a CEO meeting with Minister and Deputy Minister, but in the part I just read to you didn't mention Minister. But, Mr. Wiseman, you did attend this meeting?

MR. WISEMAN:

A. Yes, yes.

Page 8

CHAYTOR, Q.C.:

Q. Okay.

MR. WISEMAN:

A. This wouldn't have been the agenda in and of itself for a meeting with board chairs and CEOs. I wouldn't have seen it presented in this fashion. As I'm reading this, it looks like they're soliciting input from their senior people to inform a discussion that may occur with myself and the--and included myself and the Deputy.

CHAYTOR, Q.C.:

Q. Yes, I think that's a fair assessment of this.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. If I could just then, the first item is "Education to distinguish between errors versus variation in medical treatment." Do you recall any discussion around that at your June 14th meeting?

MR. WISEMAN:

A. We may have had a discussion around--you know, the ER/PR issue was a topic of conversation, but I think the--whether it was framed in that

Page 9

fashion. We had a general discussion in terms of, you know, there's some observations that there may have been some--you know, and this is one of the comments that had been made periodically. For example, even though there may have been a change in the test result when it was done the second time, there may or may not have been a resulting change in treatment. And I think, you know, there was--there had been several discussions in around this issue since last year, the--wanted to distinguish between those two observations so that there's a clear understanding of that. So it may have come up in that context.

CHAYTOR, Q.C.:

Q. And, Mr. Wiseman, would there have been an agenda for this meeting?

MR. WISEMAN:

A. Generally what--there would have been. Generally the board chairs meetings that we've had, or the CEOs and board chairs have met, what they tend to involve is the CEOs attend a meeting during that day, so they have an agenda they deal with and the then I join them, tend to be later in the evening, and we

Page 10

conclude the business piece of the meeting with my attendance. And there is some things that we'll have identified that they want to talk to me about while I'm there because some of the items they would have addressed during their meetings earlier in the day. And so generally there's a--there's a couple of times I recall there being a formal agenda and there's been also occasion, I believe, where there wasn't a formal agenda but we had some understanding of the points that we would talk about in advance. But it's not as formalized as this, as, for example, the meeting that we're looking at or the minutes we're looking at here now reflect a very formalized agenda with a very structure to their minute taking.

CHAYTOR, Q.C.:

Q. Yes.

MR. WISEMAN:

A. And the minutes, the meetings that I would have with their board chairs wouldn't be structured in a formal fashion like this, for example.

CHAYTOR, Q.C.:

Q. Would there be minutes that would come out of

Page 11

that meeting? We haven't seen them.

MR. WISEMAN:

A. No. And I have--I don't--I haven't seen any, either, so I doubt very much if there has been.

CHAYTOR, Q.C.:

Q. Is it the normal practice that there would be minutes out of the meetings with the regional boards?

MR. WISEMAN:

A. There may be some notes that the Deputy may have taken about some of the outcomes of that, but there wouldn't have been an exchange of minutes that would have taken place.

CHAYTOR, Q.C.:

Q. Yes. That was my other question. I take it you don't have any notes personally on -

MR. WISEMAN:

A. No, I don't.

CHAYTOR, Q.C.:

Q. With respect to this meeting or any of the meetings that I've asked you about?

MR. WISEMAN:

A. No, I don't.

CHAYTOR, Q.C.:

Page 12

Q. No. And who would normally take minutes for you in those meetings?

MR. WISEMAN:

A. If there's, you know, some action items to be coming out of that meeting, the official that would have accompanied me to those meetings would have made some notes of anything that we would have needed to action as a department coming out of that meeting.

CHAYTOR, Q.C.:

Q. So in this case that would have been Robert Thompson?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And so perhaps Mr. Thompson has minutes or notes?

MR. WISEMAN:

A. Yes, you may--he may just have that, yes.

CHAYTOR, Q.C.:

Q. Okay. All right, so the next item here was "Move to adjust culture." Do you recall that being discussed at the meeting of June 14th?

MR. WISEMAN:

A. No, that's not something that I have any

Page 13

recollection -
CHAYTOR, Q.C.:
Q. The next item, the next item is "Potential negative impact on leadership, accountability and decision making as a result of intense media interest." Was that discussed?
MR. WISEMAN:
A. There was a discussion around, you know, the implications for, you know, the concern that, you know, there's--if there is an intense, you know, negative discussion around the health system in general, how that might impact on abilities to, you know, recruit individuals, to retain, you know, capable competent people that may already be in the system.
CHAYTOR, Q.C.:
Q. Okay. And the fourth bullet, "HIROC's concern with full disclosure and the impact on insurability." Was that discussed?
MR. WISEMAN:
A. I can't recall having any--having discussions around issues around insurability and that kind of thing.
CHAYTOR, Q.C.:
Q. And is that something that if it had been

Page 14

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

Page 15

MR. WISEMAN:
A. I can't recall ever having that discussion at all and that's something that would stand out for me if I ended up having a lengthy discussion around that topic.
CHAYTOR, Q.C.:
Q. But have you had--forget lengthy.
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. Have you had any discussion around that topic?
MR. WISEMAN:
A. Not to my recollection.
CHAYTOR, Q.C.:
Q. Has that ever been brought to your attention?
MR. WISEMAN:
A. Someone may have made it as an observation that this could be a potential outcome, but that's not a topic that I would have engaged anyone in a discussion.
CHAYTOR, Q.C.:
Q. And who would have brought that up?
MR. WISEMAN:
A. I mean, I say if because I don't--it may have come up in the context of board chairs and

Page 16

CEOs, but it's not a topic that I had a discussion around.
CHAYTOR, Q.C.:
Q. Okay.
MR. WISEMAN:
A. Someone may have made it as an observation, but I wouldn't have engaged in a conversation around it.
CHAYTOR, Q.C.:
Q. And to you knowledge has anyone else in your department engaged in any conversation around it?
MR. WISEMAN:
A. Not to my knowledge. But then, I wouldn't necessarily have that knowledge if others were having the conversation.
CHAYTOR, Q.C.:
Q. Mr. Wiseman, do you know what's being referred to here as HIROC's concern with full disclosure and the impact on insurability?
MR. WISEMAN:
A. Unless they're talking about--I mean, I just--by the statement itself HIRCO is an insurance company who provides the liability coverage for the health system. So I'm assuming that

Page 17

they're talking about, you know, the whole issue around ER/PR and, you know, it's akin to the conversation that they may have had or Eastern Health or the CEO of Eastern Health, rather, had with me back in May of last year with respect to the rationale why they didn't have a fuller disclosure in December of '06. So it's obviously in that same context.

CHAYTOR, Q.C.:

Q. Okay. The next one is, "Implications for recruitment in an atmosphere of blame." And I take it that is similar to what you referred to in your answer on potential negative impact on leadership accountability and decision making?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. So concerns regarding recruiting medical physicians or medical personnel, including physicians?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Difference between patient disclosure and

Page 18

public disclosure, was that a topic of discussion at the meeting on June 14th?

MR. WISEMAN:

A. I'm not certain whether it came up here, but I know there has been discussions around that with respect to, you know, the patient disclosure versus the public disclosure. And that's come up a couple of times in discussions that I've had in some cases with some media in that there have been instances where, you know, patients, I've indicated that the patients were contacted even though we may not have made a public disclosure of it at that same moment, and so there may have been some delays in patient disclosure and public disclosure.

CHAYTOR, Q.C.:

Q. Was there discussion around when and how it's appropriate to make patient disclosure versus public disclosure?

MR. WISEMAN:

A. I can't recall having that kind of a conversation.

CHAYTOR, Q.C.:

Q. So this meeting wasn't about looking at best

Page 19

practices on a go forward basis?

MR. WISEMAN:

A. No, no, no, no. You know, the discussion-- now, there may have been, during the day with the Deputy and the CEO some discussions of that nature, but during my presence with the, you know, the board chairs we wouldn't have necessarily got into that level of discussion around how we might operationalize that.

CHAYTOR, Q.C.:

Q. Okay. And so you would have--you would have only attended the last part of the meeting, is that right?

MR. WISEMAN:

A. Generally what would have happened is that there's there meetings during the day an then I, my experience has been since I've been Minister, that I will join them and we'll have dinner and a business meeting that runs into the evening, and that tends to be the process.

CHAYTOR, Q.C.:

Q. And so how long would you be there, how long would you be in attendance?

MR. WISEMAN:

A. Some of them have gone from sixish to 11, some

Page 20

of them have been shorter than that, and so it's varied, the three or four that I've had thus far.

CHAYTOR, Q.C.:

Q. Okay. So in terms of a discussion or what the full discussion may have been, Mr. Thompson should be in a better position to address that?

MR. WISEMAN:

A. Yeah, there may have been some discussion prior to my arrival that involved the CEOs.

CHAYTOR, Q.C.:

Q. Okay. "Need for highly skilled human resources to accompany major capital equipment investments in rural areas." Do you recall that being discussed?

MR. WISEMAN:

A. The discussion around capital investment, yes, we've had that, equipment issues and -

CHAYTOR, Q.C.:

Q. And would any of that have been relevant to the ER/PR issue?

MR. WISEMAN:

A. It may have been tied to the issue of information technology, but we've had--I've

Page 21

had several discussions with CEOs and board chairs in and around capital investment, both from an information technology perspective and also from a medical equipment perspective.

CHAYTOR, Q.C.:

Q. Okay. "Location of services", was that discussed and, if so, in the context of the ER/PR issue?

MR. WISEMAN:

A. Not in the contest of ER/PR, no.

CHAYTOR, Q.C.:

Q. Okay. So that would not have involved any discussion about Eastern Health resuming the ER/PR testing for the entire province?

MR. WISEMAN:

A. Not at all.

CHAYTOR, Q.C.:

Q. No. "Increase in potential liability issues as a result of politicalization." Do you know what that means?

MR. WISEMAN:

A. No, I'm not certain.

CHAYTOR, Q.C.:

Q. Okay. Do you know whether or not it was discussed in your presence at the meeting?

Page 22

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. If we could look then at 0286, please? And other than--before we leave that, Mr. Wiseman, other than what is listed here, has this help jog your memory at all as to what other issues may have been discussed at the June 14th meeting, obviously in relation to the ER/PR issue?

MR. WISEMAN:

A. No. I mean, the, I mean, when we've had discussion with CEOs or I've been involved in discussion with the CEOs and the chairs collectively with respect to the issue there's been concerns around the, you know, the implications for people's confidence in their health system. You know, we talked about it in the context of, you know, my commentary around, you know, the issues around communication, the importance of, you know, the communication that takes place between the Department and the boards themselves, the importance of the communication that takes place between the boards, the authorities and

Page 23

their patients and the communities at large, so we've had some general discussions like that on occasion. And there's--you know, that's been the general thrust of it. We haven't, in those meetings, you know, we haven't had a, you know, an operational discussion with respect to, you know, trying to explore what might have gone wrong here, it hasn't been that level of discussion with the board chairs.

CHAYTOR, Q.C.:

Q. Okay. And I asked you yesterday and I'd just like to confirm now after looking at this document, you still have no recollection of any concerns being brought to your attention by the CEOs or board chairs at that meeting or any subsequent meeting regarding how the ER/PR issue was handled?

MR. WISEMAN:

A. I mean, there's been--I've had some--the very specific issue having a conversation with Ms. Dawe about it one time as chair of the Eastern Board, you know, around, you know, the comments that I may make publicly, may make publicly that may bring into question, you

Page 24

know, the management role that Eastern Health had and how this might have been managed and some concern in around that particular issue. But that was very specific to, you know, Eastern Health and much more to do with, you know, the role and relationship that I, as a Minister, would have with the board chair and with that board and in my carrying out my role as a Minister and they're carrying out their role as a board and that would apply to the ER issue but also would apply to other issues of our responsibilities.

CHAYTOR, Q.C.:

Q. Yes. And my question was more aimed at the other three health care authorities, whether or not they addressed any concerns or brought to your attention any concerns about the handling or management of the ER/PR issue?

MR. WISEMAN:

A. Not that I can recall.

CHAYTOR, Q.C.:

Q. Okay. P-0286, please? And again, Mr. Wiseman, this is an excerpt from the minutes of Executive Management Meeting of Eastern Health, May 16th, 2007. And we can see the

Page 25

number of people from Eastern Health who were in attendance. And then on the second page of the exhibit, which is page 5 from the minutes, 2.2.1, "Estrogen, progesterone testing. There has been significant media attention related to the ER/PR receptor testing. On 15th, May, 2007 George Tilley, Dr. Howell and Heather Predham briefed the Minister on the issue." Mr. Wiseman, you told us last day or the day before that that you did recall having a briefing by George Tilley on May 15th?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Do you recall that Dr. Howell and Heather Predham were also present?

MR. WISEMAN:

A. I had said, I might have indicated there were officials there, too, but I wasn't sure if Dr. Howell, but I knew there was another lady, but I wasn't sure of her name.

CHAYTOR, Q.C.:

Q. So I take it it may well have been Heather Predham?

MR. WISEMAN:

Page 26

A. Yes, quite very well have been, yes.

CHAYTOR, Q.C.:

Q. Do you know Heather Predham?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. And so would this have been the only occasion on which you would have met with her?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And Dr. Howell being in attendance, if that were to be the case, you don't take issue with that?

MR. WISEMAN:

A. No, no, no. That would be quite natural and normal.

CHAYTOR, Q.C.:

Q. Did anyone other than Mr. Tilley provide information to you on May 15th?

MR. WISEMAN:

A. There would have been an exchange around the table and I suspect anyone in the room would have provided some information because they would all be contributing to trying to give me as much information as they had.

Page 27

CHAYTOR, Q.C.:

Q. Do you know Heather Predham's role with Eastern Health?

MR. WISEMAN:

A. I understand she--and I don't know the exact title, but I know she's involved with the quality assurance program.

CHAYTOR, Q.C.:

Q. Okay. And do you recall whether or not she was part of the discussion, did she provide you with any information on May 15th?

MR. WISEMAN:

A. She may very well have been, because it was a--you know, those that sat around the table would have all been contributing, you know, to the extent that they either were asked to or that they had, the topic being discussed, they were the lead on it. There might have been any number of people would have shared it, yes.

CHAYTOR, Q.C.:

Q. And Dr. Howell, what did you understand his role to be with Eastern Health and what did he contribute to the discussion?

Page 28

MR. WISEMAN:

A. He's the Vice-President of Medical Services and in that capacity the laboratory services report administratively to him and so he has an administrative responsibility for the laboratory area.

CHAYTOR, Q.C.:

Q. Okay. P-0288. And again, this is the first page of the minutes of a meeting of Executive Management of Eastern Health held July 9th, 2007. And again, you can see the list of people who are indicated there. And at this point in time Louise Jones is now the interim President and CEO. And under "Business," No. 1, business, "Board chair discussion with Minister of Health and Community Services." in bold. "Louise Jones advised that" and there's a mistake in the minutes there, "that the Joan Dawe, Board Chair, contacted the Minister requesting a meeting. She provided him with a brief overview of executive's concerns regarding the organization's relationship and the lack of partnership with government." Now, Mr. Wiseman, this appears to be referring to a meeting between yourself and Ms. Dawe in

Page 29

which she's expressing "executive's concerns," presumably executive of Eastern Health, "concerns regarding the organization's relationship and the lack of partnership with government." And presumably this happens sometime prior to July 9th, 2007. Do you recall that meeting?

MR. WISEMAN:

A. Ms. Dawe and I did have a conversation around--you know, and I just alluded to a moment ago with respect to my role as a Minister and their role as a board in running the affairs of Eastern Health and any, you know, kind of public comments that I might make, you know, that might be, you know, might undermine something they may be trying to do. Secondly, and as this ER/PR issue was unfolding together with the Burin radiology issue that we dealt with last year, the Department was more actively engaged and involved in those issues when it became problematic than historically the Department would be on a normal operational basis.

CHAYTOR, Q.C.:

Q. And Ms. Dawe expressed concern to you that the

Page 30

Department had become more actively engaged?

MR. WISEMAN:

A. Well, you know, raised the question around, you know, the implications for that, because it's, you know, the, you know, the historic relationship between the Department and the authorities is not one where the Department is involved in the operational side of things and so any time that there's a belief or a sense that that might start to change, then obviously the board chair would, you know, feel it, appropriate that she would raise it with me.

CHAYTOR, Q.C.:

Q. And what exactly were the issues of concern, what was it that she felt the Department was doing which was crossing the line, if you will, into more the operational side?

MR. WISEMAN:

A. I'd recall us having a, you know, discussion around very specific examples, but it was a very kind of a general discussion. And both Ms. Dawe and I both understood, you know, generally what the message was that she was trying to convey to me and I, and so that was

Page 31

the general nature of the discussion.

CHAYTOR, Q.C.:

Q. What was your response?

MR. WISEMAN:

A. I mean, fundamentally as a, No. 1, I don't think we got ourselves involved in the operation of the board. There were a couple of significant issues, obviously the ER/PR issue which has been the topic we've been discussing here in recent days; the issue of the Burin radiology event. Both events had, you know, significant impacts on patients and their families. Both events created a--you know, there were some issues in and around the manner in which the process was being managed. And so the Department was more actively engaged. But it wasn't a reflection of any intent the Department to, you know, to assume an operational role within the authorities.

CHAYTOR, Q.C.:

Q. So just to be clear, was Eastern Health, through its board chair, objecting to the Department being involved in the manner in which the Department was involved, in the aftermath of the ER/PR issue?

Page 32

MR. WISEMAN:

A. Ms. Dawe didn't characterize it as they're objecting, but wanting to have a discussion with me around, you know, establishing a clear understanding of what that relationship might want to be, if I had some desire or belief that as a Minister that that, you know, normal practice, past practice was going to be changing on my watch or some kind or if I envisaged a very different kind of working relationship then they have historically had.

CHAYTOR, Q.C.:

Q. And was there discussion around the new legislation and the clarity of the roles under the new legislation?

MR. WISEMAN:

A. I'm not sure that we -- I don't recall us using the legislation as a reference point to establish a that, clear understanding. It was a general discussion, but, you know, I clearly understood the issue she was raising with me, and I'd like to think that after the discussion was over, you know, that we had a clear understanding of how I viewed that relationship.

Page 33

CHAYTOR, Q.C.:
Q. And did you or your Department in any way change its management or handling of the ER/PR issue from that point?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. So you didn't see any concern with how the Department was dealing with the issue?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. And I take it while Ms. Dawe may not have been expressing objection on the part of Eastern Health as to the Department's involvement, it would be fair to say they had some concerns about the Department's involvement?
MR. WISEMAN:
A. That would be fair, yes.
THE COMMISSIONER:
Q. Ms. Chaytor, just because it happens to be on my mind and was something I wanted this witness to address, could we explore a little the Minister's view of what the Minister's role is versus what the Board's role is in

Page 34

these Authorities.
CHAYTOR, Q.C.:
Q. Yes, okay, thank you. So, Mr. Wiseman, what is your understanding of what your role is vis a vis the Authorities, and what the role of the Board -- the Board of Trustees, what would their role be?
MR. WISEMAN:
A. The Board -- just to back it up a little bit, the Boards are established through their -- they have their own legislation, which I've alluded to earlier, that the new legislation of the Regional Health Authorities has an Act proclaimed April 1st of this year, so they now have a piece of legislation to establish them as an independent corporation, and they -- they are mandated to provide a range of programs and services in their respective regions of the province and they provide those with -- the Department of Health and Community Services on behalf of the Government provides the budget process, budget for that, and -- but in terms of the delivery of those programs and services, and how they go about doing that, the delivery model and the staffing

Page 35

associated with that, they makes those kinds of decisions themselves as an Authority. Within the Authorities themselves, the Boards of Trustees, they themselves deal with policy matters and they then in turn will hire a CEO and have an executive team around them to guide the day to day operation of the Authority as they deliver those programs and services. The Trustees themselves through various reporting mechanisms they would have within their structures, various committee structures they would have, you know, information would then flow back up from the administration into the Board itself and the trustees. The trustees would be involved in policy related matters and trustees, as a matter of course, would not be involved in the day to day operation of either one of the Authorities.
CHAYTOR, Q.C.:
Q. And your role?
MR. WISEMAN:
A. My role as a Minister is to facilitate that process happening, obviously, but in terms of the current legislation, also gives me the

Page 36

authority, if necessary, to provide direction to the Board and then their legislation indicates that they will respond to that direction. That direction wouldn't be at an operational level to determine whether or not, you know, a particular surgery takes place on Monday or Tuesday, it wouldn't be around how many staff you would have, but it would be in a much more broader context with respect to programs and services.
CHAYTOR, Q.C.:
Q. Can you give us an example?
MR. WISEMAN:
A. Well, one extreme, for example, would be the -- you know, we will have a surgical program in Central Newfoundland and the Minister would decide that there would be an orthopedic surgery program in Gander. How the Board delivers that in terms of the number of surgeons they have, anesthetists they have, nursing staff they may have, and the number of operating rooms they may have, that will be their call, they will make that decision. If they were to decide they're going to modify that in some fashion and only have it for two

Page 37

days a week versus five days a week, you know, as a Minister, I might, you know, think it's more appropriate that the service be a lengthier program and that they provide services on an extended period, and I may ask them to have that service extended beyond the current level. That kind of a -- that's the kind of position I use to illustrate a point.

CHAYTOR, Q.C.:

Q. And if and when an issue arises in terms of the provision of the services, something of the magnitude of what we've seen here with ER/PR, what if any involvement would the Board have in addressing that issue, and what if any involvement should the Department and you, as Minister, have involvement in?

MR. WISEMAN:

A. I think in this particular case in hindsight now, one of the things, for example, that I now recognize and will become a part of future practise, you know, there's an issue that's arisen with this particular issue here today where there was a coordination issue between the four regional health Authorities and the

Page 38

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

Page 39

CHAYTOR, Q.C.:

Q. Okay, and I will bring you to that February news release.

THE COMMISSIONER:

Q. Before we leave this point, I take it from your comments that essentially you see the role of the Minister as a, broadly speaking, person who provides policy directive on a sort of wide level for Boards, and that otherwise you see them as developing policy for your consideration which you may or may not accept, and the Authorities run the day to day operations of the institutions which they run, and the Department doesn't interfere unless it becomes a question of some magnitude. Can you help me with how something that gets to be so big that the Department might feel that it was the time to step in and get involved in the issue? How do you make that call?

MR. WISEMAN:

A. That's a fair question, Madam Commissioner. It's a judgment call, obviously. You know, the number of times that that would happen in the normal course of the operation of either one of our Authorities -- in an ideal world,

Page 40

that shouldn't happen at all. Recognizing that that's not reality, that there will be circumstance where there is a greater public interest, or that the issue at hand extends beyond the boundaries of one Authority, or that there is an issue where the Authority may have a view that may not necessarily be supported by Government in terms of how its delivering a program or service or how an issue is being managed, and the Department through my office would want to become more actively engaged with that Authority on the issue. So that would be an extreme -- hopefully, an extreme circumstance.

THE COMMISSIONER:

Q. And that might differ with Minister to Minister in the sense that what one Minister might consider something of significant or large enough public interest to step in might not be the same as another Minister would consider.

MR. WISEMAN:

A. It's a bit of a judgment call, you're right, because it's not one of these things that you can write a policy that says when it falls in

Page 41

this category, and here's what characteristics it might have and it's the time for the Minister to step in. I think if we -- we have right now a mechanism in place where the CEO's of each of the four Authorities and the Deputy Minister in the Department are meeting either in person or via conference calling on a frequent basis so that we have -- there's a close connection, so the Department is engaged at the CEO level pretty closely to be aware of trends or issues as they emerge to be able to be dealt with, but the -- so, therefore, that -- the ability to be able to be a little more actively engaged and more proactive exists today versus in the past, it's a little closer working relationship now. So those events that happened where the Minister would have to have his officials get more actively engaged with an Authority in trying to manage through an issue should be less frequent, but when it does, there is some element -- there is some element here of where a judgment call will get made.

THE COMMISSIONER:

Q. Now what's the difference in your role as

Page 42

providing policy directives and the Board of Trustees, who as I understand it, also see their role as a policy directive role essentially?

MR. WISEMAN:

A. The -- by way of illustration, we would -- as a Department, for example, we would establish standards in the operation of -- the that's recently come across my desk, as we look at standards for personal care homes in the province, there's a serious --

THE COMMISSIONER:

Q. So provincial-wide standards?

MR. WISEMAN:

A. Provincial-wide standards for personal care homes. The Authorities then would take those standards and they would operationalize them and apply them across the entire province, and officials in my Department would be involved, and there would be consultation with the Authorities in the development of that policy, but that would be a provincial standard. The Authority would -- in relationship to that area, for example, the Authority would be involved in establishing policies around the

Page 43

budgetary process that would determine the allocation of resources for those programs, and they would develop those kinds of policy decisions. They would also -- policies that might pertain to some human resource practises, they would be within the Authority to do those things. Provincially through the President of Treasury Board there is a provincial wide collective bargaining process, so Government would be involved in the collective bargaining process for the employees of the health sector, but each Authority may have their own set of human resource policies and practises applying to their particular -- you know, the staff that they have working with them. So at the Board level, they would be responsible to ensure those kind of policies are in place, but at the provincial level, we would establish the collective bargaining conditions.

THE COMMISSIONER:

Q. And would it seem strange to you that the Department would have knowledge of an event of major public interest before the Board would?

MR. WISEMAN:

Page 44

A. That would be -- that would be unusual. If there was a -- if you're a Board Chair and you have a CEO, your expectation would be that if there is a critical issue facing the organization, that the expectation would be that you would advise your Board through your Chair, and then as part of managing that issue, you're working in unison with the Department of Health and Community services and you'd continue to do that in your operational role, but clearly the expectation I would see any Chair having is that that information would be -- the Chair would be advised, and the Board then through the Chair would become aware of it.

THE COMMISSIONER:

Q. Thank you. Sorry, Ms. Chaytor.

CHAYTOR, Q.C.:

Q. Thank you, Commissioner. Arising from the Commissioner's questions, Mr. Wiseman, what factors are relevant in determining when and how you would make the judgment call?

MR. WISEMAN:

A. Well, first and foremost, it would have to be a significant event, significant issue, that

Page 45

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

CHAYTOR, Q.C.:

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

Page 46

standards for tertiary care?

MR. WISEMAN:

A. Not so much the standards issue around the delivery of those are the quality of care being provided, you know, the clinicians within those program areas whether it -- for example, if it's a cardiology program, the people involved in that program would be involved in developing the standards for that care, and the standards of care would be using current best practices, and the Department wouldn't be involved with those standards. If there are some of those standards that need to be -- you know, as a part of the extension of the treatment of a patient where the patient may be returning to their home region for rehabilitation or some kind of continued treatment, if there's some protocols that need to be in place to ensure that that standard of care continues, the relationship between Eastern Health and the provision of those tertiary services and the other three Authorities, that would happen between the two Authorities involved.

CHAYTOR, Q.C.:

Page 47

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

MR. WISEMAN:

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. It predates that?

MR. WISEMAN:

A. It predates that, yes.

CHAYTOR, Q.C.:

Q. Before I leave this document, 0288, you

Page 48

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

MR. WISEMAN:

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 49

January, so this was the first real time that we had an opportunity in my relationship with the four Authorities to be actively engaged around an issue, so it was a kind of discussion around, I guess, kind of understanding each other. So that was the nature of the conversation.

CHAYTOR, Q.C.:

Q. And how was it seen that you speaking out on criticisms regarding recordkeeping or what you perceived to be a lack of disclosure, how could that undermine what Eastern Health was trying to do? What was it they were trying to do that she was expressing the opinion that it could undermine their work?

MR. WISEMAN:

A. And I didn't -- you may want to ask Ms. Dawe because I really didn't explore that with her. I heard her question -- I heard her comment, and we engaged in a conversation, but I didn't try to better understand her perspective. We just talked in generalities around what my views were on certain issues, and talked a little bit about my approach as the Minister.

CHAYTOR, Q.C.:

Page 50

Q. Yes, unfortunately she's been here and gone, and that issue didn't come out in terms of her expressing to you that your comments might undermine, so that's why I thought I'd explore it further with you since it's what you're telling us.

MR. WISEMAN:

A. Sure, and I -- I didn't -- like I say, trying to get an appreciation for why she would want to have that conversation, I didn't get into that kind of exploration. I accepted the comment on its face and provided some of my own commentary with respect to my perspective rather than trying to debate with her any views that the Board may have.

CHAYTOR, Q.C.:

Q. So this reference in P-0288 to concerns regarding the organization's relationship, I think we can understand that, and the lack of partnership with Government, what you understood that to be was those public comments that you had made, and the fact of the Department becoming more actively engaged and seeking clarity around everybody's role?

MR. WISEMAN:

Page 51

A. Yes.

CHAYTOR, Q.C.:

Q. That's what you understood this lack of partnership comment is about?

MR. WISEMAN:

A. Exactly, yes.

CHAYTOR, Q.C.:

Q. If we could have 0289, please, and again this is an excerpt from the meeting of Executive Management of Eastern Health, July 11th, 2007, and the first page shows the people who are in attendance, and then on the second page under Item 3.2.1, the heading is "Executive meeting with Board of Trustees", and the Board Chair offered the Executive -- I note that this has second draft revised through it, this is the draft that we were provided with, "Board Chair offered the Executive to meeting with the Board to voice their concerns directly to the Board. The Executive declined the offer. Direction for Louise Jones from Executive collectively is to continue as past practice, and the CEO will be the conduit with the Board. Louise Jones will express these concerns to the Board Chair on behalf of the

Page 52

Executive", and then the next paragraph, "On a related note, Louise Jones advised that she will be meeting with Deputy Minister, Robert Thompson, on Thursday, 19th of July, 2007. Executive has requested for forward to Louise Jones, issue for discussion. Among the issues that will be raised are: lack of partnership with Government, judicial inquiry PR/ER", and there are three other issues there which don't appear to pertain to this. So again I take it -- the lack of partnership, we've already explored. First of all, did you attend the meeting as well on July 19th, 2007?

MR. WISEMAN:

A. With the Executive Management of the Board?

CHAYTOR, Q.C.:

Q. This appears to be that Louise Jones will be meeting with Mr. Thompson on that date.

MR. WISEMAN:

A. No, no, no, I --

CHAYTOR, Q.C.:

Q. You didn't attend that. Did Mr. Thompson report back to you as to the outcome of the meeting?

MR. WISEMAN:

Page 53

A. It wouldn't be -- the relationship between the CEO and the Deputy, as I was describing a moment ago, there's frequent exchanges back and forth. Each and every time that happens, I may or may not be aware that the Deputy has had such a meeting. If there was an issue came out of the meeting that, you know, was important for the Deputy to bring to my attention, then he would have used his discretion in letting me know that he had a meeting with the CEO and this issue came up that he thought was significant enough for me to know, but other than that, I wouldn't automatically get an update each and every time that he would have had such a meeting. Mr. Thompson and I did have a -- I don't know the exact, it may have been in and around this time here, a discussion around that relationship issue and some concerns about how -- you know, Eastern Health would have had around that point, but they were consistent with what I was sharing with you a moment ago that came from Ms. Dawe -

CHAYTOR, Q.C.:

Q. So it was nothing different than what had been

Page 54

expressed to you by Ms. Dawe?

MR. WISEMAN:

A. No, and at an operational level, I mean, as we dealt with ER/PR file and as we dealt with the Burin radiology file, officials in the Department of Health and Community Services were very much working, you know, with the officials in Eastern and, you know, making frequent contact about the status and wanting to know how things were moving forward. And in some cases, you know, providing some suggestion as to how things might be done different or something. So the experience in this period from May up through and including dealing with the Burin radiology file, you know, the Eastern Health and the Department of Health and Community Services would have had much more intense and frequent conversations between officials at both levels working on what ordinarily would be an operational issue.

CHAYTOR, Q.C.:

Q. So coming out of this meeting on July 19th, 2007, which we assume went ahead, do you recall any issue of significance being brought to your attention by Mr. Thompson regarding

Page 55

the ER/PR issue?

MR. WISEMAN:

A. No, there might have been a--over the course of the summer Mr. Thompson and I would have had a number of discussions, but I, you know, and we've had discussions around the ER/PR issue. I was aware of the relationship piece that had been raised with him, but whether it grew out of this meeting or some other conversation that he would have had with Louise Jones at the time, you know, I'm not sure which.

CHAYTOR, Q.C.:

Q. 290 please? And again it's an excerpt from the meeting of Executive Management Minutes, Louise Jones in the interim president and CEO and a number of other people in attendance. And on page two of the exhibit, there's reference to CEOs meeting with Deputy Minister, July 19th, 2007. So I take it the meeting did go ahead and this is Louise Jones now reporting on her meeting with Mr. Thompson. And the first bullet is, "There was discussion on the rules of engagement and an understanding of each other's roles and the

Page 56

need to keep the Minister informed." Do you know what that's all about?

MR. WISEMAN:

A. Certain rules--the reference to rules of engagement, that term has come up in conversations that I've had with the Deputy, it actually came up in a conversation that I had with Ms. Dawe at one time too, I don't know when it was. But this, I suppose from the Board's perspective, you know, the events of last eight or nine months have seen the Board and the department more actively engaged with the authorities on these two files than it historically had in its relationship. And I guess when the Board has its own legislation and its own--and through the legislation is given some autonomy and historically in the Province,you know, the boards have had a high degree of autonomy in running their affairs and so any time that there's been some sense that that's about to change, then obviously the boards want to better understand it. And one of the things that, for example, I've asked, as a Minister, to have a closer working relationship between the Directors of

Page 57

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

Page 58

was to advise the department that it was happening and how they were dealing with it and it just provided a closer connection with the department so we understood the issues that they were dealing with, and understood that this was an issue of public interest to the people of Central Newfoundland. And I feel in those kind of circumstances, there's an obligation for the Board to ensure that we, as a department, know that and I, as a Minister, become aware of that. And so it's a--which, you know, in as much as, historically that may have happened naturally, but now it's occurring because I'm asking for it to occur and so, therefore, there may be, you know, for some who had been involved in, as a trustee for awhile, may be witnessing a slight change in how a Minister is wanting to have that closer connection, wanting to have that more frequent flow of information on critical issues.

CHAYTOR, Q.C.:

Q. And so Robert Thompson would have brought that issue forward on your behalf to Ms. Jones in this meeting on July 19th, by according to

Page 59

what's here?

MR. WISEMAN:

A. Yes, yes.

CHAYTOR, Q.C.:

Q. It appears to be so. So I just want to understand then, you're looking for more formal processes to be put in place to ensure that in fact, you, as Minister of Health, are kept informed on those key issues?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Yes. And have those processes been put in place?

MR. WISEMAN:

A. I think one of the things that--when you say "formal process" I think the illustration I used was the Central Newfoundland example which happened after the ER/PR issue last year and it happened after the Burin radiology issue, as an example of where, you know, the authorities are now, have changed their past practice and have moved into that kind of a mode, because I wouldn't use the word "formalize" it, but articulated it and has

Page 60

created an understanding that that's the expectation.

CHAYTOR, Q.C.:

Q. So your expectation is that regardless if the handling of an issue is happening on an operational basis, you expect to be kept fully apprised of that issue and how it's unfolding and how it's being resolved?

MR. WISEMAN:

A. If it has a, you know, if it's a significant issue for that region, has a broad public implication and it's important that I, yes, be kept in the loop.

CHAYTOR, Q.C.:

Q. Such as the ER/PR issue?

MR. WISEMAN:

A. Yes, exactly.

CHAYTOR, Q.C.:

Q. Okay, and then the next paragraph on 219, Louise Jones went on to explain "that the day-to-day communication of the organization"--perhaps I should go back to the sentence right after the one that I read previously. It says, "However, there must be processes established whereby information is requested

Page 61

through the executive level within the organization and directed back through the Department of Health and Community Services." And I believe, Mr. Wiseman, that's what we just discussed.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Louise Jones went on to explain "that the day-to-day communication of the organization is carried out between the CEO with Deputy Minister and the Board Chair links directly with the Minister." So I take it that's not a change, that's what has--that's been the practice historically.

MR. WISEMAN:

A. Normal practice, yes.

CHAYTOR, Q.C.:

Q. Yes. "The organization must also strengthen its communication processes by ensuring that a Vice-President of Chief Operating Officer signs off on document that is forwarded to the Department of Health and Community Services. A formal policy will be developed in this regard and will need to be reinforced at the

Page 62

Director level." Is that something that you or your department requested?

MR. WISEMAN:

A. No, it's something--this was being held, the Eastern Health within their own organization would want to organize themselves so that information is flowing into the department, they have some ability at their senior level to ensure that it's accurate and there's an awareness at the senior level that the information is flowing.

CHAYTOR, Q.C.:

Q. It's really quite similar to what the government has seen fit to do on its briefing notes?

MR. WISEMAN:

A. Similar, yes.

CHAYTOR, Q.C.:

Q. And so, but this idea didn't come from the department?

MR. WISEMAN:

A. No, well it didn't come from me, it may have come out of the conversation with the Deputy and CEO, I really don't know, but it wouldn't have come from me, personally.

Page 63

CHAYTOR, Q.C.:

Q. And the idea then of someone senior in the organization, a Vice-President or a Chief Operating Officer signing off on a document before it goes to the department, is that now in effect?

MR. WISEMAN:

A. Within their organization?

CHAYTOR, Q.C.:

Q. Yes, in what you are seeing come to your department from Eastern Health, are you seeing the document signed off by a COO, the CEO or a VP?

MR. WISEMAN:

A. I really don't know, primarily because if there's information flowing into the department from Eastern, the information would come to my attention would be communication, correspondence addressed to me from Eastern and generally those things would be signed by the Board Chair. If there's an exchange of information going from operational people within Eastern Health into the Board Service's Division of the Department of Health and Community Services and that exchange would

Page 64

occur frequently, that wouldn't come across my desk anyway, so I wouldn't really know that.

CHAYTOR, Q.C.:

Q. Okay, so for example, if the practice is continuing that information would be provided from Eastern Health to the department with the view that it ultimately ends up in your briefing note, you wouldn't see whether or that that information has been signed off by anyone from Eastern Health?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. By the time it gets to your briefing note, there's no indication in the briefing note as to the source of the documentation or who signed off on it?

MR. WISEMAN:

A. No, it's not.

CHAYTOR, Q.C.:

Q. And that's not a practice right now in the department to actually have it in the document that does land on your desk to say who brought this information forward, who signed off on it?

Page 65

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

Page 66

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

Page 67

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

Page 68

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

Page 69

CHAYTOR, Q.C.:
Q. And, of course, we'll also raise the question with Ms. Jones when she's here.
MR. WISEMAN:
A. Yes.
CHAYTOR, Q.C.:
Q. Yes, okay. So it's just around, I take it, the discussion is around trying to be clear on roles, although sometimes the lines aren't clearly defined, is that fair?
MR. WISEMAN:
A. And that's a fair point and you're right and to be frank, I'm not sure that it will ever be, you know, abundantly clear because the public expectation will be that, as a Minister, that you will be in a position to make public comment and the expectation that if asked, that you would make public comment. And that you would be in a position to do that and the expectation is that you would and I will.
CHAYTOR, Q.C.:
Q. Yes, okay, thank you. Unless there are other meetings that you can recall with the other Health Care Authorities around this issue,

Page 70

other meetings or discussions, I plan to leave that issue now in terms of discussions with the other Boards, so there's nothing else you can think of in terms of any meetings or discussions you've had with the Health Authorities around this issue?
MR. WISEMAN:
A. Other than those that I've already referenced with respect to, you know, the meetings with the Board Chairs and CEOs that have happened periodically since I've become Minister and there's been a couple since this issue arose last year, in May, and so we've, you know, other than those which we've already referenced.
CHAYTOR, Q.C.:
Q. Yes, okay. And who, again, is your EA?
MR. WISEMAN:
A. Sharon Vokey.
CHAYTOR, Q.C.:
Q. Sharon Vokey. I don't know if I asked you that before. And would she take notes for you at those meetings?
MR. WISEMAN:
A. She may not always attend.

Page 71

CHAYTOR, Q.C.:
Q. Okay, I'm just wondering in terms of any notes of any meetings around the ER/PR issue, so I take it, it would either be your Deputy Minister or your EA or both?
MR. WISEMAN:
A. Most of the conversations that anything that would have come out of those discussions around ER/PR would have involved the Deputy, Moira Hennessey or the Directors of Communication.
CHAYTOR, Q.C.:
Q. And you would expect any or all of them to have notes on the meetings that you attended regarding the issue?
MR. WISEMAN:
A. Very likely they would have notes and comments about those meetings.
CHAYTOR, Q.C.:
Q. Okay, thank you.
CHAYTOR, Q.C.:
Q. Have you ever discussed the ER/PR issue with Peter Dawe, the Executive Director of the Canadian Cancer Society of Newfoundland and Labrador branch?

Page 72

MR. WISEMAN:
A. I may have, I don't recall any specific meeting that we would have had. I've had, over the course of the last, well since becoming Minister, I've had several discussions with Peter, in the role, what they do, we've had some discussions around, for example, very recent conversation we would have had centred around the cancer strategy for the Province, you know, we've cross paths at some functions very recently at Daffodil Place and we had an exchange like that, but I don't recall having a dedicated meeting where we discussed ER/PR.
CHAYTOR, Q.C.:
Q. And I take it you never sought a meeting with him on the issue?
MR. WISEMAN:
A. I don't recall having a dedicated meeting on the, we may have had a meeting where the issue of ER/PR became a part of the conversation, but I don't recall it.
CHAYTOR, Q.C.:
Q. And the recent discussions around the cancer strategy and meetings regarding Daffodil Place

Page 73

or meeting him at any function for Daffodil Place, I take it that's all since you're Minister of Health?

MR. WISEMAN:

A. Yes, now there was, in my capacity as Parliamentary Secretary, I recall having a couple of meetings with Peter and the President of this Society on behalf of, I'm not sure if it was, I think it was former Minister Ottenheimer, that would have happened on a couple of occasions, if I'm not mistaken.

CHAYTOR, Q.C.:

Q. Okay, and would the issue, though, of ER/PR have been raised?

MR. WISEMAN:

A. No--well, I'm just trying to recall when I would have had these meetings because I -

CHAYTOR, Q.C.:

Q. I understood you had no dealings with the ER/PR issue when you were Parliamentary Secretary?

MR. WISEMAN:

A. No, that's why I'm saying--unless it would have--in the context of it was in the public domain and started in the fall of 2005. If I

Page 74

had a meeting with him, if it came up as a comment that he may have made, I wouldn't have engaged in a conversation with him because I wouldn't have had kind of an awareness to be able to engage in any kind of conversation with respect to it.

CHAYTOR, Q.C.:

Q. Okay, so I just want to understand what you're saying. So while you were Parliamentary Secretary, you did have a couple of meetings with Peter Dawe?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And those would have been on other issues?

MR. WISEMAN:

A. They would have been on, you know, for example, we talked about the ban on the smoking in bars and bingo halls. We talked about, you know, the smoke free campaigns. It's been around those kinds of things, as an example. There may have been other meetings that I had that, on behalf of the Minister, that, you know, other initiatives might have been a part of the agenda and the reason for

Page 75

them coming in. I recall having a couple of conversations with--when Dr. West was their President and him and Peter met with me, but I think it was in my capacity as Parliamentary Secretary, then acting on behalf of the Minister.

CHAYTOR, Q.C.:

Q. So nothing to do with the ER/PR issue?

MR. WISEMAN:

A. Not that I can recall, no.

CHAYTOR, Q.C.:

Q. And did you, do you think that would have happened given that you indicated that you didn't have involvement in the ER/PR issue?

MR. WISEMAN:

A. No, I mean, that doesn't--it don't sound like it would have been reasonable for me to have had a conversation with him about ER/PR and it may have been--because if it was an issue in the public domain at that time, you know, Peter may have made some comment about it or there may have been some kind of reference to it, but we wouldn't have engaged in an exchange in and around it.

CHAYTOR, Q.C.:

Page 76

Q. And would you have initiated any contact with Peter Dawe around the issue or around Peter Dawe's communications on the issue?

MR. WISEMAN:

A. Not that I can recall.

CHAYTOR, Q.C.:

Q. And is that something you think you would recall?

MR. WISEMAN:

A. Not necessarily, no.

CHAYTOR, Q.C.:

Q. And if you weren't involved, yourself, in the ER/PR issue, would you expect that you would have initiated contact on the issue or on Peter Dawe's communications around the issue?

MR. WISEMAN:

A. I mean, there may have been, the issue around Peter's--public comments Peter may have made on some issues, you know, Peter and I have had a couple of conversations around some public comments he would have made that the department may have had some, you know, different views on, but in terms of government's action or lack of action on some front, that Peter and I have had a couple of

Page 77

conversations around those sorts of things.

CHAYTOR, Q.C.:

Q. Okay, so tell me what that's about? So Mr. Dawe is making public comments and the department has a different view and -

MR. WISEMAN:

A. He may have made some comments around the, you know, government's lack of action on a particular front and that I would have had a conversation with him about, you know, what government has actually done on some areas with respect to cancer treatment or cancer care. And there's been a couple of occasions that I've had those kind of conversations with Peter, but--and they would have, over the course of the last, since 2003, I guess, when we formed government, a couple of discussions on behalf of Ministers I've had with Peter and a couple of conversations I've had with him since becoming Minister as a part of our, you know, relationship that we had as a government, I had as a Minister, with a variety of organization who either--representing special interest groups or advocate on behalf of an issue and or an

Page 78

organization we would provide some funding support for it to deliver programs and services. So, you know, the Cancer Society, Arthritic Society, there's a variety of organization, Diabetic Society, we'd have a number of organizations that we have relationships with, and so I'd have periodic conversations with, sometimes in formal meetings, sometimes in casual meetings that we may run into each other some place, or we may have a telephone exchange and, but they would be, you know, varied and the Cancer Society would be one of those.

CHAYTOR, Q.C.:

Q. And in terms of the public comments that Mr. Dawe may have made, as you say may have made and that the department may have taken a different view on, and the occasions in which you spoke to him on that, did those occasions--did that have anything to do with the ER/PR issue and what Mr. Dawe was saying about the ER/PR issue?

MR. WISEMAN:

A. I can't recall. It may quite very well--in fact, just to illustrate my point, I remember,

Page 79

you know, the Cancer Society having a meeting in my home town a while back and in my introduction--Peter, as he was introducing me, acknowledged that on occasion we do agree to disagree and at times we will have different views on things, but we have a good working relationship, so he, in jest, and in making a casual comment and a joking comment, in my introduction that day made that observation, so I think it reflects, you know, the relationship that, a good working relationship that I think we have with the Society and the kind of relationship that I personally would have with Peter through those kind of connections.

CHAYTOR, Q.C.:

Q. Okay, if we could have P-0311, please?

REGISTRAR:

Q. Sorry, what was the exhibit number?

CHAYTOR, Q.C.:

Q. 311. Mr. Wiseman, this is an e-mail from Darrell Hynes to yourself, December 6th, 2005 at 11:10 a.m., and he's forwarding, Cancer Society says "Wait for results could have been shorter. It's been several months since"--and

Page 80

then it goes on. And he's saying, "FYI transcript" and at this point in time, Darrell Hynes is the Executive Assistant of the Honourable John Ottenheimer. And Mr. Hynes is forwarding to you a transcript of an article and we'll see it here if we scroll down a bit. And it's an interview of Mr. Dawe by Jeff Gilhooly. Now first of all, you would have been Parliamentary Secretary in the Department of Health and Community Services at this point in time?

MR. WISEMAN:

A. I would have been, yes.

CHAYTOR, Q.C.:

Q. And you would not have been, you told us, involved in the ER/PR issue?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. Why would Mr. Hynes be sending this to you or forwarding this transcript of this interview to you?

MR. WISEMAN:

A. I don't know.

CHAYTOR, Q.C.:

Page 81

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

Page 82

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

Page 83

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

Page 84

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

Page 85

and he finishes with, "And so you've got a group of women now who are sitting there who can't control the process and are feeling quite helpless about it." And so that's basically, I just took you through some of the points in the interview, but it seems to be Mr. Dawe speaking out about the issue and how the retesting is going and some concerns that, in his opinion, have been identified. You don't recall this e-mail or this transcript being sent to you?

MR. WISEMAN:

A. No, no.

CHAYTOR, Q.C.:

Q. Would you likely have read it?

MR. WISEMAN:

A. Well may or may not have, depending how--I have no recollection of the e-mail at all, if Darrell would have sent me an e-mail and made a comment that he was sending me, as an example of something, I may or may not have read it. If, for example, if he was sending me this as an example of something where, you know, the minister of the day was--he would have been doing it on behalf of the Minister,

Page 86

I assume, if he was sending me something that said, you know, here's an example of where Peter Dawe has been critical of government and I may not necessarily have read it, but I don't recall the e-mail and so whether he sent it in that context of not, I really don't know.

CHAYTOR, Q.C.:

Q. Do you read that as being critical of government?

MR. WISEMAN:

A. No, it's an observation that he's making.

CHAYTOR, Q.C.:

Q. Did you have any follow up with Mr. Dawe following all this -

MR. WISEMAN:

A. I don't recall the e-mail at all, so I don't recall any follow-up that would have come from it.

CHAYTOR, Q.C.:

Q. So with respect, I just want to be clear here, with respect to the ER/PR issue, have you ever approached Mr. Dawe and voiced any concern to him about this public comments on this issue?

MR. WISEMAN:

Page 87

A. To my knowledge, I may have had a conversation with Peter one time around this public confidence in our health system. I've had that conversation with numerous people and ensuring that, you know, as we try to work through, you know, a critical issue before us, as we try to ensure, make right for those people who are impacted what has happened here. In the process, you know, not to be highly critical of our health system overall or the work that's currently being done there, I may have had that kind of conversation with Peter because I've had it with many people.

CHAYTOR, Q.C.:

Q. But have you had it with him in terms of the ER/PR issue?

MR. WISEMAN:

A. In the context of the ER/PR issue, yes. I may have had that kind of conversation with Peter, because, as I said, I've had it with others, so I may have had a conversation with Peter around ensuring as we go through this process, in his role as an advocate for the people that have cancer in the province, and for dealing with cancer issues, that as we go--in his role

Page 88

and his capacity, I may have expressed some view that it's important that we not be highly critical of the good work that's being done now, so as to undermine what we now do in the system and quality work that we actually do. It's quite possible that I have had that conversation with Peter because I've had it with others.

CHAYTOR, Q.C.:

Q. And how is it that you would have perceived what Mr. Dawe was saying on the ER/PR issue could undermine things?

MR. WISEMAN:

A. I'm not making the connection between the two, I'm just making the observation that we need to be careful as we do--as I've said that to others, I've said it Mr. Ritter with the Medical Association, but I wasn't saying it because someone in the Medical Association was making the observation, I was just making it as a general observation to those people who are looked to as leaders in our health system on cancer related issues and others. And the Cancer Society is an organization that does a lot of good work in the province, they have a

Page 89

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 90

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 91

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 92

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 93

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 94

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

Page 95

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 96

CHAYTOR, Q.C.:

Q. So you have no recollection?

MR. WISEMAN:

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

CHAYTOR, Q.C.:

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

MR. WISEMAN:

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

Page 97

they said or in so saying it, I'm not saying that you should discontinue making public commentary on it, but all I'm saying is that as we make public commentary on the ER/PR issue, let's put it in some kind of a context so as not to have an unnecessary detrimental effect on our bigger health system.

CHAYTOR, Q.C.:

Q. This would have been back, I would--in December of '05, January 2006 time period?

MR. WISEMAN:

A. What would have been?

CHAYTOR, Q.C.:

Q. You have no recollection of having a discussion with Peter Dawe?

MR. WISEMAN:

A. We're going back to the e-mail. The e-mail in question here, I don't recall this e-mail.

CHAYTOR, Q.C.:

Q. Okay, and you have no recollection at that time period having a discussion with Mr. Dawe on the ER/PR issue or any comments Mr. Dawe may have been making in the media at that point in time?

MR. WISEMAN:

Page 98

A. No, I don't.

THE COMMISSIONER:

Q. Ms. Chaytor, it's about 11:00. Is this a good place to have the morning break?

CHAYTOR, Q.C.:

Q. Yes, thank you.

THE COMMISSIONER:

Q. We'll take fifteen minutes

(RECESS)

THE COMMISSIONER:

Q. Please be seated. Ms. Chaytor?

CHAYTOR, Q.C.:

Q. Thank you. Mr. Wiseman in my answer or in your answer to my question on any discussions you had with Peter Dawe, you indicated that you had discussions with Mr. Ritter. Have you had any discussions with Mr. Ritter on the ER/PR issue?

MR. WISEMAN:

A. Other than in that same way that I just described earlier in the context of, you know, the public debate and discussion around ER/PR and it's a, you know, some of the cautions, I suppose and implications and undermining what we're doing in our health system and as a very

Page 99

general kind of conversation like that.

CHAYTOR, Q.C.:

Q. Now, Mr. Wiseman, we know that there were two external reviews done regarding the ER/PR issue. Did you ask anyone--did you or anyone on your behalf ask to be provided with copies of those reports before they became released to the public after Judge Dymond's decision, had you at any time prior to that asked to see the reports?

MR. WISEMAN:

A. I hadn't, no.

CHAYTOR, Q.C.:

Q. So if there was a request to see those reports by the department back in August of 2007, that wasn't done at your direction?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. And you didn't have any knowledge that that had happened?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. Mr. Wiseman, why didn't you ask to see the

Page 100

reports?

MR. WISEMAN:

A. Well the discussion I had had at the very beginning centered around the fact that they were done as part of a peer review process and so there was that understanding of how in fact they were done and under what conditions they were done and later on, I can't recall when, but sometime over the course of, you know, before Judge Dymond's decision, discussing the issue prior to that, I was made aware that or I was advised that there was also, you know, a formal arrangement with the people who did the review, in fact, part of the engagement there was a reference to this being done as a part of a peer review process and that that, you know, this wasn't a matter of someone saying it was a peer review, I was now getting the information that there was an actual, you know, either a letter of engagement or a letter confirming the engagement that acknowledged that this was being, a part of a process to be labelled and described as a peer review process.

CHAYTOR, Q.C.:

Page 101

Q. Now at the time that we met for your interview, your second interview on March 13th, 2008, you hadn't read the reports at that point in time?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. And you've since reviewed the reports?
MR. WISEMAN:
A. Yes, I have, yes.
CHAYTOR, Q.C.:
Q. If we could have 0245 please? Now we know Judge Dymond's decision regarding the reports came down February 14th, 2008.
MR. WISEMAN:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. This exhibit is an e-mail exchange between your Director of Communications, Glenda Power and Robert Thompson.
MR. WISEMAN:
A. Yes.
CHAYTOR, Q.C.:
Q. You've seen this document before, I take it?
MR. WISEMAN:

Page 102

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

Page 103

down. What was the purpose of this document, these Q and A's around the release of the external reports?
MR. WISEMAN:
A. I'm not sure, this is an exchange between Glenda Power and Robert Thompson, so I'm not sure of the context for this exchange.
CHAYTOR, Q.C.:
Q. Was this ever brought to your attention, these questions and answers?
MR. WISEMAN:
A. Until I saw it in this document here.
CHAYTOR, Q.C.:
Q. Okay, so these were never put in front of you?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. Was there a similar draft, this is the draft we have, was there a similar Q and A's prepared for you to enable you to speak on the issue of the release of the external reports?
MR. WISEMAN:
A. There may have been. The peer review reports? I can't recall.
CHAYTOR, Q.C.:

Page 104

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

Page 105

MR. WISEMAN:
A. That's right.
CHAYTOR, Q.C.:
Q. So that's not correct?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. And if we come down to No. 5, "Were you made aware by Eastern Health of the issues addressed in these documents?" "Eastern Health provided the department with briefings between 2005 and 2007 about the quality reviews (this could be interpreted as the Minister having seen the reports?) and the progress towards implementation of recommendations made in the reviews." Can you explain why there would be concern that the department, having obtained briefings between 2005 and 2007, could be interpreted as the Minister having seen the reports?
MR. WISEMAN:
A. I didn't write it, so I can't comment on it, really. I've already shared with you that the, I saw the recommendations themselves summarized on a spreadsheet that was sent to

Page 106

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

Page 107

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

Page 108

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

Page 109

the Commission, and the issue of peer review I had, in some ways I was hoping that in that process that the outcome, there would have been some comment around what peer review--what protection peer review had because fundamentally we still had, in this particular case, Justice Dymond has indicated that these reports were not peer review, so therefore they need to be made available to--in a more public way. We still have a question and I say "we", you know, as a Minister, there is a piece of Legislation that gives protection to peer review and then there's the Inquiries Act, which does not and so the question around how privileged and how protected is peer review is still a question and a question that we need to turn our minds to, I think as a health system and there's been, as I understand it, varied opinions on that, and so there is still--we still have, as a system, us as a government, a need to now, you know, turn our heads to and have some discussion around the peer review process and whether or not that has, the degree of protection that it hysterically has had and should it have and

Page 110

that's an issue that we really haven't turned our heads to since Justice Dymond's ruling. So when you frame the question, do you think I have the authority? If it's--very obvious if there's a report commissioned by either one of our authorities around some aspect of their health services that is not a part of a peer review process and obviously the answer is yes. There is still this question around peer review that needs to be dealt with. I haven't turned my head to it yet, but it is a question that we need to deal with and it's surfaced in this particular instance here. And so it's an issue that we do need to, I think, collectively as a system turn our heads to and have some discussion around.

CHAYTOR, Q.C.:

Q. And the legislation, the Regional Health Authorities Act, which was now proclaimed April 1st of this year, if I could just direct you, please, to P-0295 and page 9 of that Exhibit?

UNKNOWN SPEAKER:

Q. (Inaudible) they're not entered yet.

CHAYTOR, Q.C.:

Page 111

Q. They're not entered, okay. I will then just read it out to you. It's quite short. Section 24, "Where requested to do so by the Minister, an authority shall provide the Minister with the records, reports and other documents he or she specifies in the request." Do you have that legislation in front of you, Minister?

MR. WISEMAN:

A. Just you're talking about the new Regional Authorities Act?

CHAYTOR, Q.C.:

Q. Yes.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. Section 24?

MR. WISEMAN:

A. Sorry, twenty?

CHAYTOR, Q.C.:

Q. 24, should be page 9. "Where requested to do so by the Minister an authority shall provide the Minister with the records, reports and other documents he or she specifies in the request."

Page 112

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Have you turned your mind to what, if any, impact that section may have on this issue?

MR. WISEMAN:

A. Just, I guess, my answer that I gave you a moment ago in terms of turning your head to the peer review, I really haven't.

CHAYTOR, Q.C.:

Q. Okay. So that's an issue, I take it, that's still under, you have taken under advisement?

MR. WISEMAN:

A. I do.

CHAYTOR, Q.C.:

Q. And that's something that you and your government intend to look at further?

MR. WISEMAN:

A. We do need to give that--in light of--I mean, Justice Dymond was clear in his ruling, it's not a question of it not being clear. There was--not that the question was put to him, either, but the question around whether or not peer review has the protection that--under the Inquiries Act or any other piece is something

Page 113

that we need to turn our heads to.

CHAYTOR, Q.C.:

Q. One of the issues, of course, in this particular case was that Eastern Health did assert protection from disclosure over those external reviews.

MR. WISEMAN:

A. Yes, yeah.

CHAYTOR, Q.C.:

Q. And which really were reports that investigated the matter. They were timed right after the issue had arose and Dr. Cook was certainly clear in saying he wanted to get to the bottom of the issue. And so has government given any thought to how on a go forward basis if a similar situation were to arise in the future, how the government can assure--and that there's another assertion because it well could be done under a quality assurance, by a quality assurance committee or a peer review committee that those reports could be done and fit within the four corners of Evidence Act in a future case. So has government turned its mind towards how it is going to insure it has access to all relevant

Page 114

information to be able to determine if it has to make the judgment call that you talked about this morning?

MR. WISEMAN:

A. I think that's a part of the question that I've answered a moment ago. This process of peer review and the mechanisms for providing a review in an environment where, you know, those individuals who are experienced and skilled and in a position to be able to do that would want to do it in an environment where, you know, there's not a blame being assigned in some fashion and so that which is--you know, the principle behind the peer review process in the first place, as I understood it, is provide an ability to be able to allow or to allow a clinician's work to be reviewed by another clinician, expert in that field, to provide some critique and comment with a view of creating an improvement on a go forward basis without having to assign blame or having to create a circumstance where, you know, there would be a reluctance on the part of the reviewer to be as objective as they ordinarily would be if they had some

Page 115

element of protection. That was the principle, as I understood it. Obviously, you know, we would want to make sure that we still have an ability to have a--you know, and I think society would be well served by having a mechanism to insure that, you know, clinical decisions and clinical judgment is reviewed by others who have expert, you know, expertise in that area. And the issue of peer review is an area that now has come under some discussion as a result of the whole issue of the Inquiries Act. And where Justice Dymond didn't answer that question in his judgment, it's still one that remains to be dealt with. So it's linked to the question you're now posing is, has government turned its head to how can we insure that each and every time there's a review done, that it's done in a fashion that it gets the objective of insuring that insight is gained while at the same time insures that, you know, there's a disclosure of that insight. And that's a part and parcel of that bigger consideration that we haven't turned our heads to.

CHAYTOR, Q.C.:

Page 116

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

Page 117

for the benefit of the public interest will not occur in the future?

MR. WISEMAN:

A. Until government turns its head to it, I can't give you an answer today that there's a solution to that. You know, this is a, it's a significant issue that you raise, it was a significant issue that got raised in the question before Justice Dymond and government hasn't turned its head to it. You know, the points you're making are valid. You've asked in the past, you know, why as a Minister hadn't directed Eastern Health and I think I'd indicated to you that--and why I hadn't intervened in that court proceeding before Justice Dymond. I thought it was a good opportunity in an environment where, you know, those who had standing could make argument in and around the merits of peer review, as we now understand it, and if there was a, you know, an opportunity to have Justice Dymond to voice an opinion and express a view on that in his ruling, then it would have provided a foundation for us as a government to know how to move forward. And for government to

Page 118

interfere in that process and have its own opinion would have in some way potentially influence the outcome. And I thought it was better to have that kind of, you know, much more objective arguments being made by many sides of that point to Justice Dymond. But at the end of the day, you know, he made a ruling on the issue at hand, which should be information in the reports be made public and deemed that they weren't peer review and they should be made public.

CHAYTOR, Q.C.:

Q. Yes, and my -

MR. WISEMAN:

A. I don't know what -

CHAYTOR, Q.C.:

Q. - I'm not rehashing that issue. My intent is on a go forward basis what can be put in place.

MR. WISEMAN:

A. And I guess, and what I'm saying to you is that, you know, you're asking me for a definitive answer here today and what I'm telling -

CHAYTOR, Q.C.:

Page 119

Q. Or what the government--yes.

MR. WISEMAN:

A. - you--what I'm telling you is I don't have a definitive answer for you today.

CHAYTOR, Q.C.:

Q. But it's being worked on?

MR. WISEMAN:

A. I've indicated to you that government has to turn its head to this issue of peer review in light of not having the, a part of Justice Dymond's ruling commenting around the peer review process itself. He commented on the instance before him with respect to these reports and his judgment centred on these reports only. The larger picture of peer review and the protection it gets under the Evidence Act versus what was envisaged under the Inquiries Act is another, another bigger topic and one that we need to turn our heads to. But I don't have an answer for you today, but it is an issue that government does need to turn its head to.

CHAYTOR, Q.C.:

Q. Yes. The concern being so that if there were to be a similar situation in the future in

Page 120

terms of any relevant documentation or information that comes out of that, that could be pertinent to the health and well being of the residents of this province, that the government would have a plan in place as to how to deal with that?

MR. WISEMAN:

A. Yeah, we do need to turn our heads to the issue, yes.

CHAYTOR, Q.C.:

Q. Are you aware of the existence of any other expert opinions, analysis regarding this ER/PR issue?

MR. WISEMAN:

A. With in Eastern--the issue within Eastern -

CHAYTOR, Q.C.:

Q. At all.

MR. WISEMAN:

A. Oh, the concept of ER/PR?

CHAYTOR, Q.C.:

Q. Yeah, to your knowledge has any other expert, other than Dr. Banerjee and Ms. Wegrynowski, has any other expert given an opinion or conducted any analysis on this issue?

MR. WISEMAN:

Page 121

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

Page 122

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

Page 123

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

Page 124

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

Page 125

necessarily the focus of much of the discussion back in May.

CHAYTOR, Q.C.:

Q. You were taking from the discussions repeated reassurances that everybody had been contacted?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. So if it had been brought to your attention that there were issues regarding information management, would you have felt reassured?

MR. WISEMAN:

A. The issue of the information--this is a budgetary process we're referring to here. Each and every year all of our health authorities make submissions for, you know, it's a request for funding for a variety of initiatives, so the information management would have been a part of that. I don't recall a year--I only--I have only been around a year, but I can't envisage where there would have been a year where any authority would have asked for and got exactly what they asked for because the wish list in any budgetary

Page 126

process is always pretty extensive.

CHAYTOR, Q.C.:

Q. Right.

MR. WISEMAN:

A. And government's capacity to respond would be not always consistent with the request. So the notion that there was a, you know, request for information--support for information support or technology would have been known to me as a part of last year's budget process, yes.

CHAYTOR, Q.C.:

Q. When you were being reassured by Eastern Health that all patients had been contacted, did they, in giving you those reassurances, put any kind of qualifier on that in terms of, "Well, to the best of our ability with the information management systems that we have," was it raised in that context that, "yes, we have contacted everyone but here's what we're dealing with."?

MR. WISEMAN:

A. No. In the issue--as I've said to you repeatedly here, during the period when I was reassuring people that if everybody was

Page 127

contacted, I used the phrase "Unequivocal".

CHAYTOR, Q.C.:

Q. Yes.

MR. WISEMAN:

A. They had been consistent, persistent in their comments and it was only until sometime the first part of June of last year, and I don't know the exact date, within the first week or 10 days or so, June, I think it was, there would have been a meeting involved the Deputy at that time and there's some qualifiers starting to be placed on the information. But prior to that there were no qualifiers, there were no, you know, best we have available, none of that kind of phrase was being used.

CHAYTOR, Q.C.:

Q. Okay, right. So during that time period, that was my question, this wasn't raised as an issue with you?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. The second page under "Background," it says, "Over the past two years Eastern Health has been reviewing its clinical and administrative

Page 128

support system as it moves forward in its integration." Prior to what we see here in this document--I assume this document, was this a presentation made to you, were you ever given this presentation by Eastern Health?

MR. WISEMAN:

A. It may have been a part of something that they gave me, yes.

CHAYTOR, Q.C.:

Q. If you just want to have a look through, I'll just--does it look familiar to you?

MR. WISEMAN:

A. Yeah.

CHAYTOR, Q.C.:

Q. That's pretty much -

MR. WISEMAN:

A. Yeah.

CHAYTOR, Q.C.:

Q. So my question is whether or not prior to this presentation you're aware of whether you had had a similar presentation made by Eastern Health for seeking funding for information management and decision support or you're aware of whether or not a similar presentation was made to the Department prior to you

Page 129

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

Page 130

$1.6 million." Do you know if those positions mentioned there in quality and information management were, in fact, cut?
MR. WISEMAN:
A. I don't know.
CHAYTOR, Q.C.:
Q. Did you ask Ms. Jones that when she gave this presentation?
MR. WISEMAN:
A. I can't recall, but I don't know.
CHAYTOR, Q.C.:
Q. Since the reduction of the health care boards from 14 to four has the government conducted any analysis or evaluation to determine the feasibility or achievability of the goals that were set by the amalgamations?
MR. WISEMAN:
A. No, we haven't.
CHAYTOR, Q.C.:
Q. Is there any intention to do so?
MR. WISEMAN:
A. I mean, one of the things that I've said with respect to the consolidation of health boards is it happened in 2005, the boards are still going through some transition issues that they

Page 131

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

Page 132

five years to actually deal with some of the transition issues and then and only then would it be, you know, it would be beneficial to have an evaluation of the success of that consolidation and then you're in a better position to determine whether or not it actually worked.
CHAYTOR, Q.C.:
Q. Was there research at some point, though, being conducted by Dr. Patrick Parfrey on the issue, are you aware of that?
MR. WISEMAN:
A. I'm not aware yet.
CHAYTOR, Q.C.:
Q. Okay. There was some reference in the documentation, but perhaps that's before your time.
MR. WISEMAN:
A. Quite possibly, yes.
CHAYTOR, Q.C.:
Q. Or perhaps it's a different issue. Okay, so you're not aware of that?
MR. WISEMAN:
A. Not aware of it, no.
CHAYTOR, Q.C.:

Page 133

Q. Okay. And then the last paragraph, "The following graph has been utilized by Eastern Health in presentations over the past two years to point out the fact the organization is under invested, based upon the CIHI Canada database in the areas of administration support and information management." So what's been indicated here by Ms. Jones is that the graph that she attaches on the next page which we have here, in this presentation she's saying that the graph has been utilized in presentations over the past two years to point out the fact the organization is under invested in those areas, including information management. But to your knowledge that presentation that she's referring to hadn't been made to you before and you're unaware of whether it was made to the Department before?

MR. WISEMAN:

A. You're right, yes.

CHAYTOR, Q.C.:

Q. Okay. Now, this is November, '07. I understand that you held a press conference in November, '07. If we could have P-0128, please, page 55? Okay, Mr. Wiseman, this is a

Page 134

news release, November 2nd, 2007. Perhaps you could tell us, what was the purpose of this news release? It's indicated to be "Health Minister provides update on work to secretary to Cabinet (health issues) on ER/PR retesting process." What was the purpose of the news release at this point in time?

MR. WISEMAN:

A. Fundamentally as the heading would indicate, you know, we had--I made some reference last week, as well, to the establishment of the task force in adverse events. But also as a part of the role that Robert Thompson was carrying out, we needed to--he pulled together a team of people from the Centre for Health Information to work with him and his staff to try to, as what started out as a process to identify the communication pieces around the ER/PR, those individuals who were--had their tests done and retested and had communication actually taken place. As a part of that process he needed to work at reconstructing the whole database, which included identifying who may have been impacted, who was tested, who was retested and what tests were sent out

Page 135

for redoing at Mount Sinai. And what this is here is an update on some of the early findings of that piece of work that he's doing. And the release goes on to talk about the work of the group that's in place, but also identifies key pieces of information that's in here that's updating it. As you may recall, in earlier documentation that the Eastern Health was reporting back last year there was 939 patients had originally ER/PR tests done between that period and they were sent for retesting to Mount Sinai. You know, we now indicate that in here that there was a--like, that number is going to be in excess of 1000, and that the other thing we indicate in here, that there were some cases found, 15 cases, in fact, that had been found that were not sent out to Mount Sinai for retesting and should have been.

CHAYTOR, Q.C.:

Q. So there were 15 new cases which had just been identified?

MR. WISEMAN:

A. Yes, that needed to have been sent out and they had been sent out over the course of the

Page 136

months preceding this release.

CHAYTOR, Q.C.:

Q. And do you know where those cases originated and why they had been overlooked?

MR. WISEMAN:

A. They were identified as a part of the work being done by the Centre for Health Information. In terms of their--they would--some were obviously as they went about the doing their work, they realized that the information that tracked these patients and the information that tracked whether or not it was being sent out for testing and the return, that was, the information was either catalogues or logged in in a variety of sources. So there was multiple sources that they had to go to to try to reconstruct this number and in so going through those multiple sources of information that's when they recognized and identified these 15.

CHAYTOR, Q.C.:

Q. Did you understand that most, if not all of those patients were from the Carbonear area?

MR. WISEMAN:

A. I didn't understand that.

Page 137

CHAYTOR, Q.C.:
Q. You didn't know that, not from any particular area?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. Okay. So what was your source of information about how those patients were identified?
MR. WISEMAN:
A. My source?
CHAYTOR, Q.C.:
Q. Yes, who told you?
MR. WISEMAN:
A. This would have come from Robert Thompson, who was heading up this process.
CHAYTOR, Q.C.:
Q. And you continue on then to say in this release, as well, "One of the key learnings is that record keeping at Eastern Health is clearly inadequate in this area and I have made it clear to them that this situation must be addressed immediately."
MR. WISEMAN:
A. Um-hm.
CHAYTOR, Q.C.:

Page 138

Q. Is this one of the comments that Ms. Dawe brought to your attention?
MR. WISEMAN:
A. I don't know if this particular one would have been brought to my attention as a quote, but, you know, the thrust, I guess, of my comment here would be consistent with some of the comments I made to you earlier this morning.
CHAYTOR, Q.C.:
Q. And it goes on to say that "It is important to note," and again, this is you being quoted in saying this, "It is important to note that the ER/PR testing protocols in place today are on par with the best processes in the country and patients should have confidence that they are receiving quality of treatment today."
MR. WISEMAN:
A. Yes.
CHAYTOR, Q.C.:
Q. Mr. Wiseman, where--what's the source of this information that the ER/PR testing protocols in place today are on par with the best processes in the country?
MR. WISEMAN:
A. That would have come about as a result of, you

Page 139

know, my confidence to be able to say that came about as a result, which was my answer to you last week with respect to the initiatives undertaken by Eastern Health to improve quality, the resources that they've allocated to this area and some of the--the implementation of the recommendations that were made in the reports that you referenced earlier, the external reviews.
CHAYTOR, Q.C.:
Q. So that's your assessment. At this point in time you would not have seen the reviews?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. Right. At this point in time.
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. Okay. So that's your assessment based on what information had been given to you by Eastern Health as to what recommendations they had put in place?
MR. WISEMAN:
A. This is a view the Department now, based--at

Page 140

this particular time that's the view of the Department that I'm expressing here and it's based on the initiatives undertaken by Eastern Health to provide quality programming in that area.
CHAYTOR, Q.C.:
Q. And it's not based on anything that you've heard from any external reviewer?
MR. WISEMAN:
A. Not directly to me, no.
CHAYTOR, Q.C.:
Q. Well -
MR. WISEMAN:
A. Well, in terms of if you're asking -
CHAYTOR, Q.C.:
Q. Indirectly?
MR. WISEMAN:
A. No, no, no. If you're asking if I have engaged somebody to actually give me that opinion, it was done on external review, no.
CHAYTOR, Q.C.:
Q. Are you aware of anyone who has said that, that the protocols in place today are on par with the best processes in the country?
MR. WISEMAN:

Page 141

A. At the time I said that here I hadn't, but now I think I read to you the other day a reference to the quality reports that were done in December, which would have been following this. But at the time I made this statement, I wasn't aware that -

CHAYTOR, Q.C.:

Q. You're referring to the QMP-LS report?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. But I don't see anywhere in there where it says that they're on par with the best processes in the country.

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. There's a comparison made to similar labs in Ontario.

MR. WISEMAN:

A. Yes, I understand that, yes.

CHAYTOR, Q.C.:

Q. Okay. So my question is, because, of course, this is part of the Commission's mandate and if there is information out there that says

Page 142

that, that would be relevant -

MR. WISEMAN:

A. Yes, and -

CHAYTOR, Q.C.:

Q. - and of interest to the Commissioner to know if somebody has assessed the process and protocols as being on par with the best in the country.

MR. WISEMAN:

A. Yes. No, there hasn't been.

CHAYTOR, Q.C.:

Q. Okay, thank you. If we could have 0246, please. By the way, Mr. Wiseman, that press release, was that actually done as a press conference, the February -- sorry, November 2nd, 2007?

MR. WISEMAN:

A. That one was, yes.

CHAYTOR, Q.C.:

Q. That was done as a press conference, was it?

MR. WISEMAN:

A. Yes, yeah.

CHAYTOR, Q.C.:

Q. Okay. The next one I wanted to bring your attention to is February 22nd, 2008. I

Page 143

understand that you held a press conference then as well?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And what was the purpose of that press conference?

MR. WISEMAN:

A. That was again to provide a further -- the work of the Centre for Health Information had progressed, and Mr. Thompson was now in a position to provide me with updated information and what we were now doing was going out with that new updated information. In addition, you know, as a Government we had now made some decisions in terms of some things that we had already learnt and that we wanted to now implement some -- take some action, make some investments in some areas, and also make some policy decisions about what we might do on a go forward basis, so in addition to providing the update of information, we made an announcement as well of some initiatives that Government was undertaking to strengthen our information

Page 144

management systems, but also to invest in issues such as mandatory accreditation in this area.

CHAYTOR, Q.C.:

Q. Okay. So on this, the investment in the information management systems, did that arise from the presentation by Ms. Jones back in November of 2007?

MR. WISEMAN:

A. It would have come from that, yes.

CHAYTOR, Q.C.:

Q. And I'm just going to start now with -- by the way, whose idea was this press conference?

MR. WISEMAN:

A. I'm not certain if it would have been -- the manner in which we communicate information is either by way of a press release or a press conference, and this would here would require -- Mr. Thompson had done a technical briefing as well to be able to explain how he came up with the numbers that he did, and talked a little bit about the work that he was doing, so there was a technical briefing that occurred prior to the press conference, so that would have been dictated by the nature of

Page 145

the information and how much detail we need to be able to disclosure. If it's a simple short message, then a press release could go out. If it's a little more detailed, there would be a press conference.

CHAYTOR, Q.C.:

Q. Okay, but is it -- is it your decision that it's time to get the information out there? Are you the person making that decision?

MR. WISEMAN:

A. The piece around the -- that kind of evolves in terms of the state of readiness. You know, when we -- in this particular case, the information itself that Mr. Thompson was providing, you know, because his database is -- the work that he's doing is changes, so he might be trying to conclude a piece of analysis he's doing, so sometimes there might be a delay as a result of him wanting to conclude a piece of analysis. The other piece was there was some investment decisions here that Cabinet needed to turn its head to. So, therefore, there was that requirement that that decision be made, so once both were ready, then that's what dictated the timing

Page 146

here.

CHAYTOR, Q.C.:

Q. So Cabinet would have been involved in giving the go ahead with this particular --

MR. WISEMAN:

A. The funding piece.

CHAYTOR, Q.C.:

Q. The funding piece?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and in terms of direction, in terms of going out and communicating and the manner in which you communicate this, who would give the ultimate okay on that?

MR. WISEMAN:

A. At the end of the day, it would have been no doubt through my office, but the involvement in -- it's not one of these that there's a great debate and exchange around -- you know, the communications people will provide some advice as to how we might best get the message out or get this communicated and what might be the best mechanism to inform people. So then it would have just grown from there. I don't

Page 147

recall this being a topic of a great debate or discussion on whether we do it this way or some other way.

CHAYTOR, Q.C.:

Q. And was the Premier's Office or the Premier involved in giving any direction on this?

MR. WISEMAN:

A. The Premier's Office would have been involved in whether it would have been the -- you know, the vetting of some of the content of the release that went out with it, but they would have -- I suspect, would have been involved in reviewing the documentation.

CHAYTOR, Q.C.:

Q. If we could have P-060. I'll come back to 0246. If we could have P-060 for a moment, please. I'm sorry, it's 0260. So this is just an e-mail here from Glenda Power to yourself, Robert Thompson, and Don Keats, who I take it is your new Deputy Minister, February 21st, 2008.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And it says, "Elizabeth has indicated we're

Page 148

good to go in the morning, 10:30 technical briefing, followed by Minister and Pat to media". Pat, I take it, is Pat Pilgrim, will meet at nine. Minister, I will then provide final copy of speaking notes and Q & A's as per edits from Robert. No huge changes". So "Elizabeth has indicated we're good to go in the morning", who was Elizabeth?

MR. WISEMAN:

A. That would have been in reference to Elizabeth Matthews, Director of Communications in the Premier's Office.

CHAYTOR, Q.C.:

Q. Okay. We see that reference to Pat, Pat Pilgrim, from Eastern Health.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Why was Eastern Health involved in this news conference?

MR. WISEMAN:

A. I suspect that it had to do with the fact that we were making some investments within Eastern Health, and that there might be some issues here that -- some questions that might arise

Page 149

that Eastern might be in a better position to answer them than the Department might be.

CHAYTOR, Q.C.:

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

Page 150

sent, how come deceased was underestimated, etc] we can discuss all of those questions tonight". So, Mr. Wiseman, was part of the information to be released at this time around the deceased patients and a change in the number of the deceased?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And it appears that Robert Thompson is suggesting that the role of Eastern Health would be around how the deceased families could make contact with Eastern Health?

MR. WISEMAN:

A. Yeah.

CHAYTOR, Q.C.:

Q. If we could go back now then, please, to 0246, and this is earlier on the same day, and on the bottom of the page, Robert Thompson's e-mail to Pat Pilgrim, February 20th, 2008, at 8:03 a.m. talking about some feedback received from Debbie on yesterday's meeting. Do you know what meeting is being referred to there?

MR. WISEMAN:

A. I have no idea.

Page 151

CHAYTOR, Q.C.:

Q. You didn't attend that meeting?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. "Important that we receive further feedback from you today. Can we meet late morning? Will you have additional feedback then? We also need to coordinate on the "deceased" messages and figure out how tomorrow will unfold. Therefore, perhaps we should include our Comm people so everyone is on the same page. Does 12 noon sound good". Now this is Mr. Thompson to Ms. Pilgrim suggesting they need -- we also need to coordinate on the "deceased" messages and figure out how tomorrow will unfold, and suggesting perhaps including the Comm, I take it to mean communication people, so everyone is on the same page. Mr. Wiseman, do you know what that's referring to?

MR. WISEMAN:

A. Only on the basis of what you read earlier in terms of the kind of questions that Ms. Pilgrim would answer with respect to, you

Page 152

know, how families of the deceased would be able to contact them, but beyond that, I don't know.

CHAYTOR, Q.C.:

Q. What would the deceased messages be if you're announcing that the numbers have changed and --

MR. WISEMAN:

A. I have no idea.

CHAYTOR, Q.C.:

Q. You have no idea. Was this discussed with you?

MR. WISEMAN:

A. The only thing that I can -- the only thing that -- in terms of the message here was information about how the families of the deceased could get information. That was the only message that I had any discussion around in terms of --

CHAYTOR, Q.C.:

Q. But that would be fairly factual; here's the number of deceased and here's how the families can get in touch.

MR. WISEMAN:

A. Exactly.

Page 153

CHAYTOR, Q.C.:
Q. Why would anyone have to touch base and coordinate that?
MR. WISEMAN:
A. That's a conversation you'd need to have with Mr. Thompson. I really don't know.
CHAYTOR, Q.C.:
Q. So this wasn't brought to your attention?
MR. WISEMAN:
A. No, no.
CHAYTOR, Q.C.:
Q. 0248, please, and this is an e-mail -- the only reason I bring this one to your attention, it's an e-mail from Ms. Pilgrim to Mr. Thompson again, February 20th, 2008, and she's indicating this is really not working for us, there seems to be some time pressure, and she says, "What is the great rush with this, what difference will another day make other than give us an opportunity to try to be prepared for this. I have told you that we work with one great limitation here. There are many stakeholders and they are busy clinical people. I cannot get them. I cannot get anyone right now that I need. I know that

Page 154

Oscar is not available this evening. I would dare not ask Nash to come in to do anything", and she goes on from there. I should finish that sentence perhaps, "after his involvement today with the media". My question is that Eastern Health seems to have been articulating to Mr. Thompson that they felt under some pressure to pull this news conference off at that particular point in time. Was that brought to your attention?
MR. WISEMAN:
A. It may have -- Robert may have indicated that they had to really push to get this done, or that they were rushed to get it done, but him and I wouldn't have engaged in a level of conversation to determine whether or not, you know, if they expressed a concern, that he wouldn't have come to me and said, listen, can we postpone it because of -- this is the level of detail that Robert would easily have dealt with and would have worked it through with Pat Pilgrim.
CHAYTOR, Q.C.:
Q. Okay, and this is February 20th, 2008. When did your actual press conference go ahead?

Page 155

MR. WISEMAN:
A. It was on the 22nd.
CHAYTOR, Q.C.:
Q. So was it postponed?
MR. WISEMAN:
A. I don't know.
CHAYTOR, Q.C.:
Q. And the idea of meeting to consult with clinical people on the information that was going to be released here regarding numbers of deceased and how the families of the deceased could make contact, and information on information management, do you know why there was a need to discuss that with clinical people?
MR. WISEMAN:
A. I have no idea. The issue with -- I think one of the things I just want to point out for your benefit here, you know, Robert Thompson, in leading this process, would -- and the work that he's been doing with the Centre for Health Information, they would have as a team worked through these issues around, you know, the contact information, as this release further comments on in a moment around the

Page 156

number of people who we have no record of contact being made, that kind of detail would have been dealt with with Robert and the officials. What I would have gotten would have been a reconciled number at the end of the day, which was what was contained in the release when it was eventually done on February 22nd. What went on in the background to get to that particular point and the kind of dialogue that may have occurred, I wouldn't have been a part of that.
CHAYTOR, Q.C.:
Q. Okay. 0258, please, and again this is an exchange between Ms. Pilgrim and Mr. Thompson, and it appears to be a discussion again around what's going to happen the next day. The first paragraph, Mr. Thompson writes to Ms. Pilgrim, "Nevertheless, the database includes some key findings that it is appropriate to make public as the database is being handed over to the Commission. One of those key results is the change rate. This is the most technically complex of the presentation and it goes on with that from there and he says, "Then we present the change rate for ER

Page 157

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

Page 158

make these contacts. We will ensure it's understood that none of these results, according to our criteria, were conversions", and he goes on to say, "I'm sure you can have the Minister's speaking notes". So my question on this, Minister, is whether or not any or all of this information was brought to your attention as to what would be said and what wouldn't be said?

MR. WISEMAN:

A. There is a presentation of a -- there was a technical briefing that morning before I did my press conference and Robert Thompson would have reviewed with me the content of his presentation that he was going to do. So that would have been shared with me.

CHAYTOR, Q.C.:

Q. Okay. So this part here where it says, "We don't know the reason for each case, but there are a number of these cases because they were "no change", that Eastern Health had made a decision would not be contacted", were you aware of that?

MR. WISEMAN:

A. No. I mean, I -- to answer your question

Page 159

around why people weren't contacted, I wasn't in a position to answer that, so, I mean, the -- but I wasn't about to provide an explanation of why they weren't contacted because I don't know. When I did my press conference, I was reporting that there was 35 patients who there was no documentation to note that they had been contacted, so I was reporting as of that day there was 35 people who had not been contacted. I wasn't in a position to comment as to why they weren't or to justify why they weren't because I really didn't know.

CHAYTOR, Q.C.:

Q. But the idea that Eastern Health made a conscious decision not to contact certain people who didn't have a change, is that --

MR. WISEMAN:

A. No, I mean, I --

CHAYTOR, Q.C.:

Q. Were you aware of that?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. Or aware of the fact that Robert is saying

Page 160

this here?

MR. WISEMAN:

A. A little later on the -- you know, I became aware that there was -- as Robert was continuing to do some of his work, you know, that there was a focus on those that had change in the process, and I think some of the explanations that have been since provided by Eastern as to what might have happened here, one of the comments that have surfaced has been that they were focusing on those individuals who had changes, and as a result of that, because of that focus, some people who didn't have change may have gotten missed, but that's a theory now that's being offered as being a possible reason for not contacting people back in 2005.

CHAYTOR, Q.C.:

Q. Okay, and if we just scroll down -- well, Ms. Pilgrim's response to that e-mail is "Thanks, Robert", so there doesn't seem to be a issue raised with how he intends to frame the messages that he's indicated there, and on the bottom then of the page there's an earlier e-mail, however, from Ms. Pilgrim to Mr.

Page 161

Thompson, February 21st, 2008, and in this she's indicating she's left a message for him and she has, "I'm asking for the following", and the second point is, "Also I understand that Debbie, etc, are working on the "no contact, don't know if contact" list. I would like to know what the outcome of that is as this will definitely be an area for potential questions for me". So you're not able to shed any light on what that issue was?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. If we could have 0244, please, and this, I believe, Minister, is the draft, February 19th, 2008, technical briefing ER/PR database?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. So I take it that there was then a PowerPoint presentation made to the media that day, is that what happened?

MR. WISEMAN:

A. Yes, it would have been, yes.

CHAYTOR, Q.C.:

Page 162

Q. If we could have page seven of that exhibit, please, and this talks about the number of deceased ER negative patients and states that -- I take it that's, "November 23rd, 2006, and May 17th, 2007, Eastern Health reported 176 deceased out of the 939 patients who went to Mount Sinai. "Did not use", so Eastern Health did not use mortality database to identify the deceased patients. "The database includes 294 patients who were deceased as of that date", November 23rd, 2006, "and then 323 one year later". So I take it part of this technical briefing was to identify an update in the deceased numbers and to point out how it could be that Eastern Health did not have the correct numbers?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. What's your understanding about Eastern Health not having use the mortality database?

MR. WISEMAN:

A. I understood that they had--because the mortality database is a provincial database--and I understood that they had, in the

Page 163

information they were reporting earlier, the 176 was based on information contained within Eastern Health itself and did not reflect the provincial database.

CHAYTOR, Q.C.:

Q. Okay. It says "in May 2007 Eastern committed to test all deceased and make results available". Do you know how that came about? Is that something you directed Eastern Health to do?

MR. WISEMAN:

A. I mean, it was a discussion that we had had back then in May 2007 as to why they weren't going to be done and that--I don't know if I'd use the word "direct" them to. I expressed the view that they should all be done.

CHAYTOR, Q.C.:

Q. The next page, the third bullet says "uncertainly about the total for 1998", do you know what that's about? Why is there uncertainly about the total for 1998?

MR. WISEMAN:

A. I can't recall now what Mr. Thompson would have meant by that.

CHAYTOR, Q.C.:

Page 164

Q. Has that been clarified? Is there still uncertainty about -

MR. WISEMAN:

A. I'm not certain; not sure what he would have meant by that.

CHAYTOR, Q.C.:

Q. You don't know. So we'll ask Mr. Thompson about that.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. If we could have page 21 in the document, please. And Mr. Wiseman, the announcement in terms of the funding for information management, I take it that was just for Eastern Health, not for all four authorities?

MR. WISEMAN:

A. In the announcement there's a block of money for Eastern and a 2.1 in Eastern's system.

CHAYTOR, Q.C.:

Q. Yes, so it's just Eastern Health, -

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. - not the others.

Page 165

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

Page 166

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

Page 167

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

Page 168

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

Page 169

is left to be contacted and arrangements have been made for the oncologist to meet with that person this week to do that. And that came about as a result of the analysis that needed to be done of that case wasn't concluded until Friday past.

CHAYTOR, Q.C.:

Q. Okay. So, there's only one--to your knowledge, out of--and at this point in time, it said 49, but at some point, that was reduced to 35.

MR. WISEMAN:

A. Well, I think the distinction being there were 44 patients, nine of which were deceased, 35 were living.

CHAYTOR, Q.C.:

Q. Okay. So, out of those 35, there's now only one remaining?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. If we could have O-0256 please? And Mr. Wiseman, this is an e-mail from Tara Furlong to Robert Thompson copied to Glenda Power. Who is Tara Furlong?

Page 170

MR. WISEMAN:

A. She's the assistant to Glenda Power in Communications branch in the Department of Health and Community Services.

CHAYTOR, Q.C.:

Q. Okay, thank you. February 21, 2008, 5:14 p.m., "a Q & A is attached for your review and feedback". What was the purpose of those Q & A's?

MR. WISEMAN:

A. They would have been--it's normal practice when there is a press conference like this to provide some question and answers the same way as you may have seen them in the briefing notes earlier.

CHAYTOR, Q.C.:

Q. Yes. One of the questions that she identifies as being something that may come up as a question for you, I guess in giving the press conference, it says, "Minister, when were you made aware of the increases in the number of patients who are deceased"? So, when was this brought to your attention?

MR. WISEMAN:

A. Just maybe, I don't know, maybe a week or two

Page 171

before this press conference. Yeah, maybe a week or two before this.

CHAYTOR, Q.C.:

Q. Under the question regarding the fact, number three, she says, she anticipates a question along the lines of "it seems incredible that over 30 people who should have been contacted regarding their test results were not. How did this happen"? And the proposed answer, "that's a difficult question to answer. I suspect it was most likely due to the inadequacies in the record keeping for ER/Pr retesting. I will point out that while we cannot say that 34 of these patients were not contacted by regional health authority. It is possible they were called by their physician". Mr. Wiseman, do you know -

THE COMMISSIONER:

Q. (Inaudible).

CHAYTOR, Q.C.:

Q. I'm sorry, did I?

THE COMMISSIONER:

Q. "I will point out that while we can say 34 of these patients were not contacted".

CHAYTOR, Q.C.:

Page 172

Q. I'm sorry, you're right, yes. "We can say", sorry. "It is possible they were called by their physician". Do you know, in the follow up with the patients, whether or not that proved to be the case?

MR. WISEMAN:

A. I couldn't tell you, I don't know.

CHAYTOR, Q.C.:

Q. Okay. And is somebody tracking that, whether or not the patients, in fact, had been contacted through some other means?

MR. WISEMAN:

A. I wouldn't know if the--as the contacts are being made, whether the responses are being recorded or not, I really wouldn't know. It's a question you may want to ask Mr. Thompson, but I'm not aware.

CHAYTOR, Q.C.:

Q. Okay. And when I scroll down through these numbers or sorry, these questions, Mr. Wiseman, I don't see the question that we ultimately know that you were asked at the press conference. The question in terms of you're releasing numbers of deceased and--why don't you tell us about that. What happened

Page 173

in terms of what question was asked repeatedly of you at the press conference?

MR. WISEMAN:

A. During that there was a question that came up numerous times by several different reporters and that was the question around the, of those that are deceased, how many of those would have had a change in their test result? And that's a piece of information I didn't have. It's a piece of information that hadn't been gleamed from that analysis up to that particular point. And subsequent to that we, Robert and his group, did the further analysis and actually came up with that number and then that became the subject of a press release that went out on March 18.

CHAYTOR, Q.C.:

Q. Yes.

MR. WISEMAN:

A. And at that time we provided the--and indicated that of the 322 people that were deceased, there were 108 that had a change in their test results. We also, at that time, confirmed as well, a number of those that--of the 691 that were living, there was a change

Page 174

for 275 of those. So, that information went out in a press release on March 18.

CHAYTOR, Q.C.:

Q. Okay. It was 18, not March 14, was it?

MR. WISEMAN:

A. March 18, yes.

CHAYTOR, Q.C.:

Q. Okay. So, I take it, looking at that Q & A's which were prepared for you, that there was no anticipation, even though you're releasing the numbers, the full numbers for the deceased or what was understood at that point in time to be the numbers of total deceased patients, and contact information for the families, there was no anticipation that a question which might come to mind would be, well, how many of the deceased had a change in result? That wasn't anticipate?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. Okay. Now, it certainly was anticipated though previously by your department. We've looked at briefing notes back--one of your first briefing notes--back May 17, 2007, had

Page 175

one of the anticipated question at that point in time being, "Why has Eastern Health not released the test results for the 176 patients"--as it was then or thought to be--"who have died since the original testing"? So, back in May of 2007 it was certainly an anticipated question.

MR. WISEMAN:

A. Right.

CHAYTOR, Q.C.:

Q. But leading into this, it was not anticipated that that would be asked?

MR. WISEMAN:

A. (No audible response).

CHAYTOR, Q.C.:

Q. And, in fact, when we think back to the CBC story of May 15, 2007, I'm going to suggest to you that one of the focusses was, at that point in time, the stories at that point in time, was why Eastern Health had not released the results on the deceased. And we've heard Minister or Mr. Osborne talk about that being a key concern of him regarding the deceased and getting the full numbers of deceased back as early as November 23, 2006. He was

Page 176

certainly posing the question as was he said his assistant at that time, Darrell Hynes, posing the question of how many deceased would have had change in results and the importance of that to factor into the overall numbers. But if we come forward then to February 2008, that was not a question that was anticipated -

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. - going into this new conference.

MR. WISEMAN:

A. And when we went into it, we didn't have the answer and, you know, as I just pointed out to you, that when the press conference was over, it was a question that had been pursued by a couple of different reporters. And so, Mr. Thompson then continued to drill down and to get the detail and we've since provided it.

CHAYTOR, Q.C.:

Q. And Mr. Wiseman, with the database and maybe you're not the right person to ask this of and if not, tell me and I'll ask Mr. Thompson or others--with the database, how difficult is it to extract that information from the database?

Page 177

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

Page 178

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

Page 179

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

Page 180

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

Page 181

the subject is "Minister briefing questions, deceased and false negatives. Of the 322 deceased, how many were false negatives"? The answer, "we have not performed analysis on change rates for living and deceased. Is it essential to know this number? How many people died with a false negative result"? And question, "why was this analysis not conducted"? So, again, this is being prepared after the -

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And is it intended that it's a summary of the questions that were posed, is that what this is?

MR. WISEMAN:

A. I don't know. This is an exchange between Melissa Sullivan and Robert Thompson. So, I don't know what it would have intended to do.

CHAYTOR, Q.C.:

Q. Did you, after the press conference direct that the number be obtained, the number of deceased who had changed results?

MR. WISEMAN:

Page 182

A. Again, the issue, the use of the word "direct", I mean, Robert and I would have had a conversation -

CHAYTOR, Q.C.:

Q. Or request.

MR. WISEMAN:

A. Yeah, and this--both would have recognized that we needed to--this is a question, important question, we didn't have the answer and it was reasonable that we provide it.

CHAYTOR, Q.C.:

Q. Okay. And did you have that conversation with Mr. Thompson immediately after this press conference?

MR. WISEMAN:

A. It would have been some time after that, yes. I mean, I suspect it would have been immediately after because we would have, kind of de-briefed on what had just unfolded with--because he had done this technical briefing before the press conference. And so him and I would have had a brief chat after that.

CHAYTOR, Q.C.:

Q. Thank you. This is a good point please.

THE COMMISSIONER:

Page 183

Q. All right then, we'll break for lunch. And since we're a little late, we'll make it 2:10. Thank you.

(BREAK FOR LUNCH)

THE COMMISSIONER:

Q. Ms. Chaytor.

CHAYTOR, Q.C.:

Q. Thank you. Good afternoon, Mr. Wiseman.

MR. WISEMAN:

A. Good afternoon.

CHAYTOR, Q.C.:

Q. Mr. Wiseman, I had been asking you questions when we left about the February 22nd, 2008, press conference, and a number of the questions and e-mail exchanges, of course, involved Mr. Thompson around that press conference. In that situation, the database and Mr. Thompson's role in helping assemble that information, does Mr. Thompson report to you?

MR. WISEMAN:

A. Mr. Thompson is reporting -- as Secretary to the Cabinet, he reports to the Cabinet Secretariat, but in terms of the piece of work that he's doing, obviously it relates to the

Page 184

Department of Health and Community Services in a file that we're very obviously actively engaged, so what he's been doing is he's been making sure that he keeps me appraised of what progress he's making in that database. In terms of his reporting relationship as Secretary to Cabinet, it would be with the Executive Council.

CHAYTOR, Q.C.:

Q. And who's that?

MR. WISEMAN:

A. The Clerk of the Executive Council would be Gary Norris, and I'm not sure what the formality in terms of the reporting relationship, and then by extension through Cabinet, but as I would see it, it would be with the Executive Council.

CHAYTOR, Q.C.:

Q. And who would -- who would he be reporting to at Cabinet?

MR. WISEMAN:

A. That's what I'm not certain of.

CHAYTOR, Q.C.:

Q. Okay.

MR. WISEMAN:

Page 185

A. Whether it's the Premier or Executive Council, I'm not really certain what that reporting relationship would be.

CHAYTOR, Q.C.:

Q. Okay. Well, we'll take that up then with Mr. Thompson.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. I'd like to move on then to the March 18th, 2008, press release, and Mr. Wiseman, what was the purpose of that press release?

MR. WISEMAN:

A. Fundamentally we were responding to the questions that had been raised in the February 22nd media discussion around the number of deceased who had their results change on the second go-around.

CHAYTOR, Q.C.:

Q. Yes, and if we could look, please, at P-0269. So this was to answer the question that came up about the deceased --

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Page 186

Q. Primarily the deceased who had a change in their results?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Now at P-029, this is a draft of the release, and towards the -- sorry, it's just an e-mail communication the first page. Here's the draft on page two of P-0269.

MR. WISEMAN:

A. Uh-hm.

THE COMMISSIONER:

Q. I'm sorry, what was the date of this press release again? The 18th?

CHAYTOR, Q.C.:

Q. The 18th, but this draft is dated March 14th, 2008.

THE COMMISSIONER:

Q. Thank you.

CHAYTOR, Q.C.:

Q. I think that's why earlier this morning I was referring to the 14th thinking that it was the 14th. So this is Minister provides additional information on ER/PR database, and you come down into the second paragraph, it says, "Of

Page 187

the 1013 patients whose results were sent for retesting, 322 are deceased and 691 are living. This information was provided in the last update. Additional analysis show the number of deceased patients whose test results changed is 108, and the number of living patients whose test results changed is 275". So these are the new numbers which were provided?

MR. WISEMAN:

A. Yes, and that would have been contained in the release.

CHAYTOR, Q.C.:

Q. Okay, and this I believe is a draft of the release. At this particular time when the draft was being done, March 14th, 2008, it also was contemplated in the bottom paragraph that there would be information released regarding patients who were initially contacted and did not receive a second call. It says here, "At the conclusion of his work on the ER/PR database project, NLCHI also provided additional information which indicates that 16 of the 691 living patients who were initially contacted by the retesting

Page 188

process may not have received a follow up call with their second results". Minister, were you aware that at this particular point in time there was a plan to release information regarding those patients who were initially contacted, but then did not receive a second phone call?

MR. WISEMAN:

A. I became aware of this, yes, in and around this time, which is several days before the release was actually done. What had happened here is in the Centre drilling down a little further to get an answer to the question around the number of deceased who had a test result change, they -- in doing that further work, they became aware that there was some who had they had originally captured in their database as having had an initial call, but not a subsequent call when the test results came back and that's where this figure comes from. We've subsequently learned there was 15 rather than 16.

CHAYTOR, Q.C.:

Q. So these were patients who were initially called to advise them retesting was taking

Page 189

place, but then there was no follow up phone call with their results?

MR. WISEMAN:

A. No, and so what had happened, though, in addition to that there was a number that -- the 16 here, but it later got reconciled to be 15, but in addition to that, and there were a number of these individuals who -- the result that came back -- there's a term called DCIS, which is an acronym to describe a non-evasive form of cancer, and there was a group of these 15 who were in that category that required some additional analysis by pathology.

CHAYTOR, Q.C.:

Q. And who made that determination?

MR. WISEMAN:

A. When the -- this would have been the clinical people at Eastern Health.

CHAYTOR, Q.C.:

Q. Okay.

MR. WISEMAN:

A. So Mr. Thompson would have been in discussion with Eastern Health with respect to these, and so the understanding was that some of these needed to have additional analysis by

Page 190

pathology, and to determine what might be the appropriate information to be communicated when the contact was actually made. So they had asked that we would at that moment not provide the reference to the 15 in this release, but allow that other piece of work to be done and when that got concluded, then that information would be available for release. That analysis needed to be done initially.

CHAYTOR, Q.C.:

Q. So Eastern Health asked that this number 16, or 15 as it turns out, not be released on March 18th, 2008?

MR. WISEMAN:

A. At this point in time.

CHAYTOR, Q.C.:

Q. Were they all DCIS patients?

MR. WISEMAN:

A. No, there was some of them that weren't. Some of them weren't and some of them were. I think at the time there may have been six, if I'm not mistaken, six of them were DCIS and the others weren't, but there had been no change in their test results and the intent was to do -- rather than release it as part of

Page 191

the release on March 15th, or March 18th rather, to allow the work to be done on the DCIS patients and then continue with the contact for the remaining ones, but then when we provided the next update, to be able to provide that full picture of the 15 that were discovered during this period of time.

CHAYTOR, Q.C.:

Q. So some of those patients weren't waiting for any further investigation of their pathology. There were some that were DCIS, but not all the 15.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. But Eastern Health asked that you hold off on making any announcement with respect to those people?

MR. WISEMAN:

A. Well, until we had a more definitive -- the thinking was that until there was a more definitive understanding of what would be communicated to the DCIS and that analysis got done because rather than -- you know, because what we were about to release here then was

Page 192

that we've now become aware that there was some individuals who had initial contact, but didn't have a follow up contact. So the judgment call was to allow the DCIS analysis to be done by the pathologist, to continue to follow through and make contact with the remaining nine, and then when the DCIS analysis got done, as they got done then contact would be made with them, and then at a future update we will provide the commentary that -- which is what we did today, actually, was to provide a commentary today in our document today that identified that during the March 18th press release, we had knowledge of these 15, but did that further analysis, but in the interim made contact with the nine, did the analysis of the six, which brings us to where we are today.

CHAYTOR, Q.C.:

Q. So rather than announce on March 18th, 2008, that there were nine people -- excluding out the DCIS who needed further investigation according to Eastern Health and their pathology, rather than announce that there were the nine, they asked that you hold off on

Page 193

announcing any numbers around those who had received an initial call, but had not had a follow up call?

MR. WISEMAN:

A. And so the next public disclosure -- patient communication did take place, but the public disclosure would not take place until we finished all 15 because all 15 of them were in the same category, which is they all had an initial call, but didn't have a subsequent second call.

CHAYTOR, Q.C.:

Q. Uh-hm.

MR. WISEMAN:

A. So when we make the next public commentary, which is what we did today, there were 15 in that grouping. They had an initial call and now they have now had their second call.

CHAYTOR, Q.C.:

Q. Okay. So I take it, in fact, this doesn't end up in the ultimate release that goes on, so the Department agreed not to refer to those 15 patients back on March 18th?

MR. WISEMAN:

A. Yeah.

Page 194

CHAYTOR, Q.C.:

Q. Okay.

THE COMMISSIONER:

Q. So except for the one person you mentioned today who has a meeting next week, I can conclude 14 have had contact -- 14 of those 15 have had communication from Eastern Health?

MR. WISEMAN:

A. Just so that I can clarify on that particular point, this morning in my comment about the one that's being contacted this week, I apologize if I've confused you because it is a little bit of a confusing trail, the one that I referred to today is one of 35 that was referenced in the February 22nd. So on February 22nd, I referenced that there were 35. The one that I made comment earlier today that was being followed up this week as we speak is one of that group of 35. The group of 15 that I'm referring to here now, they have all been contacted as of now.

CHAYTOR, Q.C.:

Q. Including the DCIS people?

MR. WISEMAN:

A. Yes.

Page 195

CHAYTOR, Q.C.:

Q. So it was 35 plus an additional 15?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. So 50 people.

MR. WISEMAN:

A. The -- exactly.

CHAYTOR, Q.C.:

Q. But the other 15 had had an original phone call advising that retesting was taking place, but no follow up call as to their results?

MR. WISEMAN:

A. Right, and the original 35 referenced on February 22nd, we had no record of any call at the beginning or end of the retesting process.

CHAYTOR, Q.C.:

Q. No call whatsoever?

MR. WISEMAN:

A. No.

CHAYTOR, Q.C.:

Q. So it was 35 who had no contact whatsoever?

MR. WISEMAN:

A. Right.

CHAYTOR, Q.C.:

Page 196

Q. And an additional 15 who had the first phone call, but no second?

MR. WISEMAN:

A. Exactly.

CHAYTOR, Q.C.:

Q. And what you're telling us, the status today is that there is one person who has still not been contacted?

MR. WISEMAN:

A. Of that 35 original group.

CHAYTOR, Q.C.:

Q. Well, of any of them.

MR. WISEMAN:

A. Yes, exactly, okay.

CHAYTOR, Q.C.:

Q. Is that right?

MR. WISEMAN:

A. Yeah. So rather than saying one of 15 or one of 35 because I -- if you want to group them together, we have one of 50 if you want to use a total number.

CHAYTOR, Q.C.:

Q. In terms of releasing -- on March 18th, 2008, releasing the fact that 15 people had received an initial call, but not a follow up call,

Page 197

what difference would that make? How is that tied to, well, five of them still -- they're working through some pathology issues to determine. What difference would it make?

MR. WISEMAN:

A. It probably wouldn't have made a -- it wasn't a major issue, I suppose, just that the information would have been -- the intent was to follow through as soon as it got reconciled to make it a public disclosure. The critical issue in terms of the people who were impacted, which would have been the patients, they were -- the contact was initiated with them. So those nine individuals were going to have their contact and they would be advised of the results that came back. In terms of the public disclosure, there was no -- it was, I guess, a judgment call because the intent was to, you know, in the short period of time to be able to make the public disclosure of that 15 and what characteristics they had, which is that they had one call and didn't have a second, and to make that announcement all at one time. So there were 15 found to be in that category and now all 15 of them have

Page 198

had contact done. So that would have been the public disclosure and that's what we did here today. Not "here", but that's what we've done today. So that -- you know, there is nothing mystical about the rationale or reasoning. It was just that kind of judgment call at that moment. The critical piece I want to emphasize is that the patient contact did occur.

CHAYTOR, Q.C.:

Q. And the disclosure that was made today, was there anything else in the disclosure today?

MR. WISEMAN:

A. There was a -- the additional piece of information in the disclosure today indicating that there's four individuals whose test results when they came back the second time had a reference to "no tumor", and as I understand that, you may want to get a deeper understanding from someone else clinically on this, but what I understand that to be is where the pathologist on the second reading would have said that I don't see a tumor -- in the tissue you've sent me, I don't see a tumor present. So that needs to be reconciled and

Page 199

that was something that was just recently found out in recent days that those four actually did exist.

CHAYTOR, Q.C.:

Q. I'm sorry, there's how many?

MR. WISEMAN:

A. Four in total.

CHAYTOR, Q.C.:

Q. Four individuals?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And Mount Sinai indicated that there was no tumor?

MR. WISEMAN:

A. There would have been no tumor.

CHAYTOR, Q.C.:

Q. Okay.

MR. WISEMAN:

A. So, as I just said, as I understand that reference, it's that there was no tumor present on the tissue sample that was sent.

CHAYTOR, Q.C.:

Q. So today's press release released the fact that these four people had also been

Page 200

identified?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And has contact been made with those individuals?

MR. WISEMAN:

A. Not yet, and that's a piece of work not yet done. So what the -- I guess there's a couple pieces of information that came out today made reference to the 35 people that was referenced in the February 22nd release. It would have made reference to the 15 people that I just described that were identified by further analysis that took place between February and March 18th, and some work that's been done subsequent to that. It would have also identified that there were four patients who had a "no tumor" result. It would have also identified 19 individuals who are living, but all of the attempts to contact them have failed because of either telephones or mailing addresses have changed, or some other reason like that, and as part of the release today, there was a number of identified strategies to

Page 201

be able to deal with trying to track down those individuals, no contact has been made, some issues around the method of contact used was also talked about today -- because one of the things that has happened in the past, diagnostic results go back to the attending physician, so some of the contact information here was done by way of Eastern Health advising an attending physician that the results are back and here they were, and the reliance on the physician to follow through and make that contact. Just to ensure that that happened, there's an exercise starting now to actually -- for Eastern Health themselves to engage an audit process to actually go back through all of those and to ensure that that actually did take place to close that loop, and also to do some further analysis of some of their current information system database to identify some others that may have gotten lost.

CHAYTOR, Q.C.:

Q. Minister, I apologize, but I'm just looking at the documents that were handed to me this morning, and the Executive Summary of April

Page 202

13th, 2008, of the NLCHI, and I take it this what your release today would have been based on.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And this is not yet in our records here, but it -- I'm looking at the Executive Summary. The first paragraph says, "The database also identifies four patients whose retest results were "no tumor", but insufficient information exists to determine if they have been contacted".

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. So that's those four that you just spoke of?

MR. WISEMAN:

A. That's the four I just referenced, yes.

CHAYTOR, Q.C.:

Q. Then it goes on to say, "And 19 living patients who were unable to be contacted after numerous attempts"?

MR. WISEMAN:

A. Yes.

Page 203

CHAYTOR, Q.C.:

Q. So there's 19 others who have yet to be contacted?

MR. WISEMAN:

A. Yes, and that's the reference I made in terms of the process now trying to be able to use the MCP database where we have all -- all residents of the province got re-registered last year. We're hoping that we're going to be able to do some tracking in that system to be able to identify more current contact information for those 19.

CHAYTOR, Q.C.:

Q. So there's that 19, there's the one that we spoke of earlier, and there's the four "no tumor" patients?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. If we could look at P-0275 because we leave March 18th press release just to complete the circle. Actually, perhaps it's 0128, page 63.

THE COMMISSIONER:

Q. Exhibit 128?

Page 204

CHAYTOR, Q.C.:

Q. Exhibit 0128, please, page 63. I believe the other number 0275 is just another draft. This is the actual news release, I take it, Minister, regarding March 18th, 2008, and if we scroll down, there's no reference -- that reference that I had showed you in the draft to patients not contacted --

MR. WISEMAN:

A. Exactly, yes.

CHAYTOR, Q.C.:

Q. That's not there?

MR. WISEMAN:

A. That not in the -- that was in the draft that we just talked about.

CHAYTOR, Q.C.:

Q. Okay, if we could move on then. Mr. Wiseman, are you aware of any protection for disclosure given to briefing notes that are prepared for and forwarded directly to Cabinet?

MR. WISEMAN:

A. Briefing notes that are prepared for Cabinet?

CHAYTOR, Q.C.:

Q. Yes, that are -- that go directly to Cabinet. For example, if Eastern Health were to be

Page 205

involved in drafting a briefing note, and I say Eastern Health, but any external agency were involved in drafting a briefing note for Government and that briefing note was forwarded directly to Cabinet Secretariat as opposed to being sent to a Minister, are you aware of whether or not that briefing note would be subject to protection from disclosure as opposed to a briefing note that went directly to the Department or the Minister?

MR. WISEMAN:

A. I don't know.

CHAYTOR, Q.C.:

Q. You're not aware of any such --

MR. WISEMAN:

A. I don't know.

CHAYTOR, Q.C.:

Q. Have you ever heard that discussed before?

MR. WISEMAN:

A. That's not something I've ever chatted about. I really don't know.

CHAYTOR, Q.C.:

Q. Can you tell me who might be able to answer that question?

MR. WISEMAN:

Page 206

A. Someone -- maybe my Deputy might. Mr. Thompson, because of his role -- not today necessarily, because of his experience as Clerk of the Executive Council may be able to answer it for you. The current Clerk of the Executive Council will be able to answer it for you. I personally don't know.

CHAYTOR, Q.C.:

Q. Okay. You use a Blackberry?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Do you ever pen message on your Blackberry?

MR. WISEMAN:

A. Seldom. I may respond to a pen message I might get, but I don't initiate a lot of pen messages.

CHAYTOR, Q.C.:

Q. What's the purpose of pen messaging as opposed to regular messaging?

MR. WISEMAN:

A. I'm not certain to be honest. It's a -- I understand it's a mechanism that -- the e-mail system is a Government e-mail system, and the pen system is not part of the Government e-

Page 207

mail system, as I understand it, but it's not something that I'm well versed on.

CHAYTOR, Q.C.:

Q. Have you ever been the recipient of or the originator of any pen messages with respect to the ER/PR issue?

MR. WISEMAN:

A. I can say with confidence that I haven't initiated any because I don't know how the technology works. I can say that with some confidence. Whether I've received them, I wouldn't be able to say with as much confidence. They come in on my Blackberry, whether they're e-mail or pen messages. Most of the pen messages I got in my time with a Blackberry have been very cryptic, very short, and tend to come from colleagues looking for a quick yes or no answer or asking me to make contact with them. So there's never been -- there's been some e-mails potentially that I would have gotten.

CHAYTOR, Q.C.:

Q. On the ER/PR issue?

MR. WISEMAN:

A. I may have gotten, but I -- I understand that

Page 208

some time ago as part of this process here, in preparation for this process, I authorized or allowed someone in the Department to search my e-mail system -- go in on my system and search it to find out if there was any information that would have been relevant to disclose to the Commission, so I assume that got done.

CHAYTOR, Q.C.:

Q. And would that include any that were done by way of pen messaging?

MR. WISEMAN:

A. I don't -- well, if my understanding of how the e-mail system works as the Government e-mail system, I don't know -- I don't know if the technology allows that to happen. That's a technical question I don't know, but like I said to you, my text messages are so infrequent that I'd be surprised if there was much there because I seldom --I get very few text messages.

CHAYTOR, Q.C.:

Q. On the issue of the loss of confidence in Mr. Tilley, did you indicate to Ms. Dawe and/or Mr. Tilley your concerns regarding Mr. Tilley's handling of the ER/PR issue?

Page 209

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

Page 210

were content with Mr. Tilley?
MR. WISEMAN:
A. Yes.
THE COMMISSIONER:
Q. And then sometime later when the issue arose on the Burin Peninsula, your view respecting Mr. Tilley had changed?
MR. WISEMAN:
A. Yes, you're -
THE COMMISSIONER:
Q. And I further understood that you indicated that essentially your view had changed because of, my interpretation of your words, you observed the same pattern of dealing with the issue on the Burin Peninsula as you had observed in respect of ER/PR and you were not content with that?
MR. WISEMAN:
A. Yes.
THE COMMISSIONER:
Q. Have I misinterpreted you?
MR. WISEMAN:
A. No, no, you've summarized it accurately and it's a reflection of my comments the other day.

Page 211

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

Page 212

expressed a concern about his leadership as a general commentary and that I had--as a result of that conversation obviously she would have walked away from that conversation recognizing that in as much as some of the management decisions would have been made I may not have been happy with, but I wasn't expressing a dissatisfaction with his overall leadership.
THE COMMISSIONER:
Q. But you were expressing some concerns about the handling of a particular issue?
MR. WISEMAN:
A. Yes.
THE COMMISSIONER:
Q. To Ms. Dawe on that occasion?
MR. WISEMAN:
A. Yes, yes.
THE COMMISSIONER:
Q. Okay. I'm sorry, Ms. Chaytor, I've interrupted you again.
CHAYTOR, Q.C.:
Q. No, thank you.
THE COMMISSIONER:
Q. Carry on.
CHAYTOR, Q.C.:

Page 213

Q. Thank you. Mr. Wiseman, I'd like to turn now then to a discussion of some lessons that may have been learned or perhaps that we could look to hopefully learn from should a similar situation as this arise in the future, what would be the best course of action to be followed. And I'd like to hear any thoughts you have on that from your point of view. And I've discussed some of that already in my questioning today, but I am wondering what, if any, mechanism has the government put in place or planning to put in place to insure that should an adverse event of this nature arise in the future, the Department will be able to assure itself that it's receiving accurate information as to how the investigation of the issue is proceeding and what mechanism may be put in place to reach a timely and appropriate resolution to insure the best interests of the public?

MR. WISEMAN:

A. Just a couple of things. And maybe I might start answering your question with the reference to the February 22nd release. In that announcement, in that release of updating

Page 214

information there was also some announcement of some initiatives, some investments government were taking and I'd like to highlight a couple of them. One, we've made now a mandatory requirement that all laboratories in the province be accredited. So we've started a process already and that discussion has already started to take place where laboratories will have to go through a mandatory accreditation process, a dedicated accreditation process for laboratory services.

CHAYTOR, Q.C.:

Q. And the Department has mandated that?

MR. WISEMAN:

A. Yes. And we've already had one work--we've put together a working group lead by an official in my Department to initiate that discussion involving the four authorities and so work is in progress already in exploring how we might approach that and what kind of mechanism we put in place to do it and what kind of processes would we participate in. So that's already started, that's initiated. The second piece in terms of the, you know, the

Page 215

management process we've already indicated in that release, let me just read for you directly from it. "The Provincial Government and the regional health authorities will establish a new policy that whenever there is an adverse event that requires communication, testing or treatment for a group of patients a single official will be charged with the clear organizational wide responsibility for directing patient contact and data management. This official must have access to an appropriately skilled data management professional trained to use or design an information system which can acquire comprehensive data for all events in the response process, provide timely reports and can be audited." The second thing that comes out of that which actually arose from your line of questioning to me back in March that wasn't a part of this but it was a--your question prompted the recognition that we needed to include in here a feedback loop to the Department.

CHAYTOR, Q.C.:

Q. Yes.

Page 216

MR. WISEMAN:

A. The other thing that we've learned from this piece is that, you know, when there is, and I think I may have mentioned it this morning, when there is more than one regional health authority involved in any event, there needs to be someone that the Department of Health and Community Services needs to provide to facilitate the coordination of that activity between the authorities. So any time that there's an adverse event or an event such as what we've talked about here that the Department will need to be involved and will be involved in a coordinating role across the respective authorities that will be involved from that and that that information will then flow back to the authority--or back to the Department so the Department is in that loop and working with the authority and authorities on the issue.

CHAYTOR, Q.C.:

Q. Yes.

MR. WISEMAN:

A. And so in terms of the information flow that connects the Department with the management of

Page 217

the process itself and being able to have a dedicated person responsible for the data management perspective, then it is these communication breakdowns and the challenges we're talking about here with respect to patients finding information out that we should be in a position to actually insure that won't happen or to protect ourselves to-- to protect ourselves from that happening. The other piece in terms of the coordination piece, you know, the Department is that link between the four authorities and that coordinating role will be critical for the Department in that kind of an event, and then the information flow. And I think if the--if we have in place the data management piece and the single source for managing the event and the information gathering, we'll be able then to have as information flows to us at the Department, then we'll be able to identify where that information came from and how it got tabulated.

CHAYTOR, Q.C.:

Q. I see.

MR. WISEMAN:

Page 218

A. And so therefore when we get the information, then we can have some confidence of its accuracy knowing that it was based on some kind of a well structured system that should have collected it appropriately.

CHAYTOR, Q.C.:

Q. So is this a policy or protocol which has already been put in place or is this still under development?

MR. WISEMAN:

A. No, this is--what I just shared with you now is -

CHAYTOR, Q.C.:

Q. That's it?

MR. WISEMAN:

A. - is what the opinion of the Department is and what, well, what will be communicated to the authorities.

CHAYTOR, Q.C.:

Q. Okay. So the Department has come up with this structure and that will be communicated to the authorities?

MR. WISEMAN:

A. The piece that I read directly from the communication of February 22nd is being

Page 219

communicated to the authorities through this release. The other three pieces of information or the other two pieces of information that I've gleaned is the issue of the coordination piece is what I've recognized in recent weeks in the conversation with Robert as a result of this court--the piece of work he's been doing, how information was flowing between the authorities and no one was really fulfilling that coordinating role created some challenges and difficulties. And the second piece was one that you prompted me to think about in your questioning back in March was that connection back and the feedback loop to the Department.

CHAYTOR, Q.C.:

Q. Yes, okay. All right. And the issue then of the single official who will be responsible for--dedicated to the task of coordinating the information, that official would come from where?

MR. WISEMAN:

A. If it's in--well, if, for example, if the issue is in the Regional Health Authority in eastern or central, some senior official in

Page 220

that authority, because it's an event in that particular region. The piece within the Department of Health and Community Services, if they're involved in a coordinating capacity between authorities, the most appropriate person for that would be the ADM for Board Services.

CHAYTOR, Q.C.:

Q. Yes. And the ADM for Board Services would be the person then doing the coordination, you're saying -

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. - with the other. And I take it that the official within whichever authority the issue has arisen, that person is going to be responsible for the data collection within the authority. Is that person also going to be responsible for investigating the cause of the problem?

MR. WISEMAN:

A. I think the--what this talks about here is this, there'll be a single person responsible for the activity. They will need to surround

Page 221

themselves with the people that, the data management, for example, the technical people, the professional information management people to be able to put together the database. If there's some kind of clinical assessment needs to be taken place, then obviously bringing together and bringing into play the clinical skills that you'll need to do that kind of clinical assessment. But that sole person will be the lead person for that organization who'll be charged with that responsibility to assemble that skill set that they need to deal with the task before them. They themselves may not be that person who has the skill set, but they'll be tasked with the responsibility to assemble the skills that they need to do it.

CHAYTOR, Q.C.:

Q. And the authority would determine who that person should be, depending on the situation -

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. - who the most appropriate person would be?

MR. WISEMAN:

Page 222

A. Yes.

CHAYTOR, Q.C.:

Q. It's not contemplated that this would be a regular position, this would be according to when the situation arose?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. That person would be appointed to this task?

MR. WISEMAN:

A. Yeah.

CHAYTOR, Q.C.:

Q. And would that person then be the person responsible for identifying any experts that may need to be retained?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And would the Department contemplate having any input into that?

MR. WISEMAN:

A. I mean, the input contemplated, obviously, would be, you know, that if the--when the event occurred, coming back to some comments I made earlier in terms of that link between the

Page 223

Department and the authorities in terms of the operational relationship, if we had an event today in one of our authorities that, you know, would fall into this category here, I mean, the authority would have already been in contact with the Department and there had already a dialogue established. And if, in fact, the nature of it was such that the Department officials had some opinions and thoughts on it, I'm certain that, you know, the authority would be receptive to those kind of comments. But I hadn't envisaged it as being a formal position that they would need to report back to the Department to get authority or permission to proceed in a certain direction, but that link would be there through the ADM of Board Services.

CHAYTOR, Q.C.:

Q. And there would be regular reporting intervals to the Department and the Department, I take it, would set the nature and type of communications that the Department would expect to be getting in terms of feedback?

MR. WISEMAN:

A. Yes, exactly.

Page 224

CHAYTOR, Q.C.:

Q. And there's a protocol that will be drafted -

MR. WISEMAN:

A. Exactly.

CHAYTOR, Q.C.:

Q. - to set that out?

MR. WISEMAN:

A. Exactly.

CHAYTOR, Q.C.:

Q. Has any thought been given to drafting or setting guidelines as to when the government would step in and assume management of the issue? So everything is in place and the key person or the single official from the authority is in place and your reporting is taking place. But what happens when you're not necessarily satisfied with what you're hearing back, has any thought been given, well, we need guidelines to say, well, at this point in time we are going to intervene?

MR. WISEMAN:

A. If I was the Minister and I reached the point where I needed to make a determination that I was about to have someone go into an organization to manage an event, then I would

Page 225

really have to contemplate the future of that board and the CEO of that board.

CHAYTOR, Q.C.:

Q. But is there anything that could happen short of that so that if the information you're getting back before it reaches that breaking point, is there anything that could be done, guidelines set out for the authority in terms of the expectations and if they're not being met, then providing the feedback or the constructive criticism that's needed for them to be able to meet the expectations?

MR. WISEMAN:

A. I mean, I think the process that I've just described in terms of the, you know, if we had an event of the magnitude of what we're talking about here and some of the other things, like the Burin radiology thing, for--events, for example, and if the--if we had initial contact with the Department, advised of the event and the Department was advised, you know, the protocol I just described earlier in terms of we'd assign someone to the project, assign someone to manage this event, that's their sole function and here's the team

Page 226

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

Page 227

allows them to be a senior CEO of a major operation and my expectation and the expectation that their board would have of them, that they would be able to manage an event such as that. In the absence of that, demonstration of that ability to do that, I would have the discussion with the CEO or the board chair about the selection that they've made for a CEO and what the overall performance level was of that CEO.

CHAYTOR, Q.C.:

Q. Mr. Wiseman, in this situation there was information being forwarded to you that you later determined to be less than complete or less than accurate.

MR. WISEMAN:

A. That's right.

CHAYTOR, Q.C.:

Q. What has been built into this mechanism that you're describing to insure that that doesn't happen, that the information that will be fed back to your Department will be accurate and complete?

MR. WISEMAN:

A. In the same way as I just--as I described the

Page 228

structure of a process where we have skilled data management people, we'd have--bring into play here a structured system that would provide timely reports that can be audited. So I'd have an ability to be able to have officials in my Department look at the information that's being submitted and be able to then, if needed, audit that information so we're able to see a trial of information that lead to certain conclusions. So that it's audited, has the ability to be audited, it's structured in a, using language here to describe it, you know, to acquire comprehensive data to develop databases, to have reports that are able to be audited. You're talking about a, you know, level of sophistication and structure here that will give you an ability to be able to verify the information that you're being supplied. You know, the event that we're dealing with here today, for example, and I talked earlier about an update of information that Robert Thompson is providing, you know, the Department of Health and Community Services, or government, rather, the Government of Newfoundland and

Page 229

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

Page 230

organization. If the organization didn't have the capacity to do that and I found it necessary to resurrect or to recreate a team of people like the Robert Thompson's and send them in, I'd have real concern about the leadership of that organization.

CHAYTOR, Q.C.:

Q. Has the government retained or sought any expert advice in crisis management in coming up with what's being put in place?

MR. WISEMAN:

A. No, we haven't.

CHAYTOR, Q.C.:

Q. Has there been any inquiries made of other jurisdictions as to how departments of health approach this issue in other jurisdictions?

MR. WISEMAN:

A. Look at the mandate of the Task Force, Robert has a--the work that he's doing on, it would be to actually put together a policy for government and a position for government and working with the health authorities to deal with adverse events on a go forward basis. I'm looking to the work that Robert is doing, government is looking to the work that Robert

Page 231

is doing to provide the insights necessary to allow us to shape the kind of reference you're talking about, managing adverse events.

CHAYTOR, Q.C.:

Q. Okay. In the aftermath--sorry. Sorry about that. In the aftermath of this issue has there been any change in the policy or procedure within your Department with respect to the verification or validation of information received into the Department and relied upon by the Department from external resources?

MR. WISEMAN:

A. No, there's not.

CHAYTOR, Q.C.:

Q. From external sources, I should say. Okay. Are there any other lessons that have been learned in terms of the disclosure and communication practices in this matter so as to insure the public, and more importantly, the patients in this situation receive accurate information other than, well, technology and updating databases, anything from a qualitative point of view about policies of how people and when people should

Page 232

be communicated with, has the government looked at that at all?

MR. WISEMAN:

A. I think the whole issue of communication, patient communication and disclosure, I think there's been a--through this whole discussion I think there's been a full recognition that there was not adequate communication with the patients who have been impacted here and that we also know that events of, you know, in '05 and recognizing there was advice given to the contrary, but I've said before and I'll say again that in 2005 and 2006 there should have been a more open disclosure. I think the issues around disclosure, I think there's recognition that--and we can learn from what we just witnessed in the last couple of years, that patient disclosure is critical and that being--disclosing information with respect to issues of a person's health needs to take place early, needs to take place, you know, in a timely fashion so that individual can make appropriate decisions about their own treatment, their own course of treatment and how they might choose to do that. I think

Page 233

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

Page 234

desire by society to have full and open public disclosure, as well, in addition to the patient disclosure. And so there's a number of lessons to be learned from this exercise here with respect to the areas around disclosure and communication.

CHAYTOR, Q.C.:

Q. So has any thought or consideration been given to how in such a situation, should it arise in the future, all stakeholders can be consulted within the process?

MR. WISEMAN:

A. I think the thought has been given to discussions taking place and the person who's actually pulling that together for us as a position is Robert Thompson.

CHAYTOR, Q.C.:

Q. And in the piece of work that Mr. Thompson is doing, a significant component of the database anyhow involves the patient contact and we've talked about that in some of the updates that you've given us today on the database. But to your knowledge in the accumulation of that information, was there any consultation with the patients?

Page 235

MR. WISEMAN:

A. Accumulation?

CHAYTOR, Q.C.:

Q. The accumulation of the information as to what patients were contacted, when they were contacted? Did anyone ask the patients?

MR. WISEMAN:

A. If they got a call?

CHAYTOR, Q.C.:

Q. Yes, what was relied on, what information was relied on?

MR. WISEMAN:

A. That's a question I wouldn't want to try because I may not do justice to the answer, because Mr. Thompson would have a much more comprehensive knowledge of how they approached the data collection exercise and I wouldn't want to diminish anything he's done or to answer your question and not give credit to something that's been completed as a part of the exercise he's done. But I understand, though, there's been a heavy reliance on information that's contained in records within the authority's documentation. Some of the-- there's a piece of work taking place right now

Page 236

that has been initiated as a result of some learnings in recent days that deals with those patients who--the records within Eastern Health indicated that the method of contact was through the family physician. There's an exercise that's starting now to look at, to go back and actually verify that to see if it actually took place and that will, no doubt, result in direct contact with patients. But there may have been other times when some of this information in the database has been shared with you, may have been done by some patient contact, but I really don't know.

CHAYTOR, Q.C.:

Q. Yes, and I would suggest that most, if not all of the information that we've been provided with would be based on information provided by the Regional Health Authorities?

MR. WISEMAN:

A. I suspect that you're right, but as I say, I wouldn't want to say with certainty that's the case.

CHAYTOR, Q.C.:

Q. And you don't even know if there was ever any attempt to gather information from the

Page 237

patients themselves?
MR. WISEMAN:
A. I wouldn't know that. You may want to ask Mr. Thompson that question.
CHAYTOR, Q.C.:
Q. I will indeed, thank you. Has any consideration been given to when, in a situation such as this, it would be necessary to bring in external professionals to manage the situation or to give advice on the situation?
MR. WISEMAN:
A. We haven't had that discussion.
CHAYTOR, Q.C.:
Q. What about in terms of when it's appropriate to receive advice by way of a ethical consultation?
MR. WISEMAN:
A. I haven't had that discussion myself.
CHAYTOR, Q.C.:
Q. And you understood and I realize that and we talked about it before that there was some misunderstanding in when you thought there was an ethical consult in this case.
MR. WISEMAN:

Page 238

A. Yes.
CHAYTOR, Q.C.:
Q. It was later and it was with respect to the deceased families -
MR. WISEMAN:
A. Exactly, yes.
CHAYTOR, Q.C.:
Q. Deceased patients and contact with their families.
MR. WISEMAN:
A. Yes.
CHAYTOR, Q.C.:
Q. And you spoke in the House in some detail about who was on that committee or who you understood was on that committee. Did anyone ever advise you that the solicitor for HIROC was on the committee?
MR. WISEMAN:
A. No.
CHAYTOR, Q.C.:
Q. And what do you think of the appropriateness of that?
MR. WISEMAN:
A. Pretty unusual to have your insurance company's solicitor providing you ethical

Page 239

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

Page 240

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

Page 241

community services as seen across the country as a positive move, one that provides for a better continuum of care, one that provides for a better management of resources along that continuum of care and at the end of the day, the population of a particular jurisdiction is better served by that kind of structure.

CHAYTOR, Q.C.:

Q. Are there times that the level of knowledge and your participation in a given issue is limited by what other compelling issues you may have on your plate in any given day?

MR. WISEMAN:

A. The structure of the department, the size of the department is one thing, the structure of the department is another in terms of there are more ADMs in the Department of Health and Community Service than you might find in other departments, so the resources supports around the Department of Health and Community Services within the department would be broader than what you might find in some other departments of government. But clearly, I think in as much as it is a large portfolio,

Page 242

it's one that requires a commitment of time and energy, as do many other departments of government, but I think you know, with the breadth of the people that are there, the breadth of the department, in terms of how it's structured and supported, you know, the critical thing for, as a Minister, is that you have a quality support team around you who are able to provide that support, and as well, you have the Regional Health Authorities are also structured themselves around that full continuum of care because they provide a range of services, both acute, long-term care and community because they're at the front line providing to the delivery model and that full integration of acute, long-term care and community is reflected in how we structure our Regional Health Authorities as well.

CHAYTOR, Q.C.:

Q. Mr. Wiseman, you thought in the initial few months of your assuming this portfolio that the ER/PR issue had been dealt with by your predecessor. Is there anything in looking at how this issue unfolded from the department's point of view, is there anything in the

Page 243

internal structures of the department that needs to be looked at or re-evaluated to ensure that accurate and timely information flows to the Minister on all issues?

MR. WISEMAN:

A. I think the term, just so we put in context my comment about the first months of my being in the position as Minister, what I had indicated to you that in those first couple of months--I became Minister in January month, at any given time at any part of the year, there will be issues that a Minister is involved with that consumes a fair bit of his attention or her attention and there will be files that will keep them quite busy for a period of time. And during that time, you know, the time is not divided evenly among every file that would exist in the department and so, during the period of my becoming Minister in January, I had indicated that I had provided a cursory overview of what was in my briefing book to determine the issues that were identified by the department officials as being ones that were, you know, the issues that the department had been either involved with or ongoing

Page 244

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

Page 245

action required and so therefore, I turned my attention to those files that needed an immediate action.

CHAYTOR, Q.C.:

Q. Okay, and my question, I guess, is that there's obviously been some analysis done as to what may or may not have been lacking in the Regional Health Authorities to have contributed, in particular, to the communication issues that arose. I'm wondering whether or not there's been any retrospective analysis or any plan to do any retrospective analysis from the department's point of view on how to move forward and to deal with a situation like this in the future, in terms of the internal communications within the department.

MR. WISEMAN:

A. I think one of the things, the biggest thing that--and is linked to what I said a moment ago, if we have a person in the Health Authority who is seized with the responsibility to manage an adverse event and they're connected directly to the ADM of Board Services in the department, that flow of

Page 246

information is coming to that sole person. And then we have the information that is coming, is coming from a source that has the capacity to be audited, then with those connections made, between the dedicated person at the authority and the person within our department, because one of the things we have learned from this piece is information--some information is flowing by way of Communications people, some information is flowing by way of the Deputy Minister and some information was flowing by way of the ADM. And I think when you look at those three different sources, in as much as the information was coming and all of it, you know, had some merit and none of it was intended to be misleading in any fashion, it was coming from three different sources and I think, you know, what we were envisaging as having a sole person at the authority level dealing with an adverse event, plugging into a sole contact within the department, which I believe needs to be the ADM of Board Services because that's the connection that already exists, then we'll have a single source of

Page 247

information that's coming from a verifiable and auditable database. So we should have then an improved flow of information and improved reliability in that information that is coming and the accuracy of that information.

CHAYTOR, Q.C.:

Q. Mr. Wiseman, I notice that the department is advertising for a medical consultant.

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. And that includes a person who can provide advice on policies surrounding quality assurance pieces?

MR. WISEMAN:

A. Yes.

CHAYTOR, Q.C.:

Q. Is that a new position?

MR. WISEMAN:

A. No, it's a position that has been vacated as a result of retirement. Dr. Ed Hunt is retiring and that's the replacement for that position.

CHAYTOR, Q.C.:

Q. Okay. Is there any plan to hire or any need

Page 248

been identified to hire any new personnel within the department in the aftermath of the ER/PR issue?

MR. WISEMAN:

A. No. One of the things that you might note as well in the announcement that I made in February of 2008, February 22nd, I had indicated that we would be putting together a quality network and, which is an initiative that we are going to re-examine all of the quality initiatives in our four health authorities.

CHAYTOR, Q.C.:

Q. Now is that different than what you've described to us as being how to respond to an adverse event?

MR. WISEMAN:

A. Yes, very separate issue.

CHAYTOR, Q.C.:

Q. And what's the quality network team, what is that?

MR. WISEMAN:

A. What we'll do here, there's two aspects of this, comment I would like to make, one if you look back at the Terms of Reference, the Terms

Page 249

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

Page 250

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

Page 251

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

Page 252

improvement.

CHAYTOR, Q.C.:

Q. And the people on that quality network team are representatives from the four authorities?

MR. WISEMAN:

A. No, that's in the process of being established as we speak, but we--there would be somebody there from within the health system, but we want to bring together, this will be a small group of a half a dozen people who have some background and experience in quality. They may not necessarily be in the health system. We can learn from other industries around quality and quality initiatives, you know, the academic community can play a role there and the Deputy and I have had some discussions around the composition of that. There will be someone who will be currently within one of the health authorities now, but it's not a mechanism that will see representation from each of the authorities.

CHAYTOR, Q.C.:

Q. Okay.

MR. WISEMAN:

A. I've had this discussion with the Board Chairs

Page 253

and the CEOs and they all understand that this is not a collection of people who are currently working with them now, but this is looking at bringing some knowledge and some skills to play in quality initiatives.

CHAYTOR, Q.C.:

Q. Okay. One moment. Mr. Wiseman, other than the signing off now on briefing notes, what has been done, if anything, to ensure that the information contained in briefing notes is more accurate? I know you answered earlier that there's no mechanism put in place where the source of external information has to be identified. Has anything else been done to ensure the accuracy of information contained in briefing notes?

MR. WISEMAN:

A. I mean, the issue of the briefing notes, I mean nothing formally if you're looking at a program that's been initiated or some kind of auditing mechanism for briefing notes. We now have a process where the person, which is the same as what we had before, a person prepares the information, it's verified by--approved by someone, generally an ADM level position and

Page 254

then signed off by the Deputy and by the Minister. And, you know, through those sequences of approvals and signing off, if there's questions or queries that arise, then they'll be, you know, information might be elaborated on or changed or strengthened or additional information sought through that process, but if you're asking if there's a verification process, no, there's no verification process beyond what I've just described with the approval mechanisms that are in place.

CHAYTOR, Q.C.:

Q. And so what's your comfort level to--bearing in mind some of the issues that were encountered in this issue, what's your comfort level in standing in the House of Assembly and speaking publicly on an issue with the use of briefing notes, what is your comfort level to satisfy yourself that the information you're about to give is, in fact, complete and accurate?

MR. WISEMAN:

A. I mean, as a Minister, I cannot and no minister in government would be in a position

Page 255

to start verifying the information of briefing notes as we're given them.

CHAYTOR, Q.C.:

Q. Well what system can be put in place to ensure that if there's external information relied on, that -

MR. WISEMAN:

A. External information I can understand that we may want to have a source of that, you know, in terms of, you know, if a statistic has been cited, then to be able to reference the source of that, how we got it or if it's a factual statement that is attributed to a particular agency or body that's external to government, you know, I can--your point is well taken with respect to acknowledging that in the source, in the document itself or in the briefing note. But, you know, beyond that in terms of from a very practical point of view, you know, to be able to verify the source of information that's in these briefing notes when they come to you prepared by someone who is working in that division or area of comment, and then have it signed off by a senior person who approves it, who also generally has a

Page 256

reporting relationship with that individual. And then, when it comes to my desk, it has already been signed off by my Deputy, who would have read it and if that person has, you know, some issues or questions or concerns they want to get some elaboration on, then to have them sign off on it. When it gets to me, for my signature, you know, there has to be, if there's some additional information that I am seeking or that the information is not clear enough for me, then my mind would turn to those couple of questions. But my mind, if my mind has to turn to questioning to the liability of it and asking for verification of what's in here, then the briefing note becomes another functional tool anyway and would have to look at how we actually get information, other than a briefing note.

CHAYTOR, Q.C.:

Q. Mr. Wiseman, I thank you for your patience, it's been longer than we expected and you've been helpful, so thank you. If there's anything else that you can think of that would be helpful to the Commissioner that I haven't covered with you, by all means, you can go

Page 257

ahead and--is there anything else that you can think of?

MR. WISEMAN:

A. Not that I can think of at this moment. Maybe before the evening is over I may make a few comments.

CHAYTOR, Q.C.:

Q. Okay, thank you.

THE COMMISSIONER:

Q. Mr. Simmons, do you have any questions for this witness?

MR. SIMMONS:

Q. Yes, Commissioner, I do.

THE COMMISSIONER:

Q. Do you want to take the afternoon break before we do that?

MR. SIMMONS:

Q. That would be fine.

THE COMMISSIONER:

Q. All right, why don't we take fifteen minutes.

(RECESS)

THE COMMISSIONER:

Q. Please be seated. Mr. Simmons.

MR. ROSS WISEMAN, EXAMINATION BY MR. DANIEL SIMMONS

MR. SIMMONS:

Page 258

Q. Mr. Wiseman, my name is Dan Simmons, I'm here acting for Eastern Health and I have a number of things I want to ask you about this afternoon, but I promise you it will only be this afternoon and I'll be done.

MR. WISEMAN:

A. That will be good.

MR. SIMMONS:

Q. I understood from when you first started your evidence that prior to entering politics you had a fifteen year career as an administrator in health care system.

MR. WISEMAN:

A. In an administrative function, yes.

MR. SIMMONS:

Q. In an administrative function, which was, I believe, at Clarenville.

MR. WISEMAN:

A. It was.

MR. SIMMONS:

Q. And that would have started when it was a relatively small organization, managing the health care facilities in Clarenville alone, would it?

MR. WISEMAN:

Page 259

A. Exactly, yes.

MR. SIMMONS:

Q. And then it would have expanded to the Peninsula's Health Care Authority which included the Bonavista Peninsula facilities and the Burin Peninsula facilities?

MR. WISEMAN:

A. That's true, yes.

MR. SIMMONS:

Q. Just generally what sort of role did you play within that larger system once it became the Peninsula's Health Care?

MR. WISEMAN:

A. Peninsula's Health Care Corporation, my role at the time was Director of Human Resources.

MR. SIMMONS:

Q. Okay, and as Director of Human Resources, I presume you would have had the opportunity to sit in on executive or other administrative type meetings in which the general management of the authority was discussed, would you?

MR. WISEMAN:

A. On occasion, yes.

MR. SIMMONS:

Q. Would that be a regular thing every month or

Page 260

two that there'd be a meeting with the CEO and the executive, the various directors?

MR. WISEMAN:

A. That would have happened, that kind of mechanism, I would have been involved with that mechanism at the former Clarenville Area Hospital Board, but not with the Peninsula's Health Corporation.

MR. SIMMONS:

Q. Okay, and over those fifteen years in the system, I gather from the ease from which you have been able to speak about health care and the way it works and what some of the principles are, that you probably learned quite a bit about the way health care is provided and health care administration works in the province.

MR. WISEMAN:

A. I wouldn't present myself as an expert, but I acquired some knowledge over the course of that time and my time in government.

MR. SIMMONS:

Q. Sure. Did you come across the consent of what is sometimes called the blame free culture within health care?

Page 261

MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. And what do you understand that to be?
MR. WISEMAN:
A. It's a process that, as part of the continuous quality improvement process that people examine events, examine actions to, with a view of learning from it and doing it in a fashion so that everybody does it in a fashion that's uninhibited, if you share your thoughts, share your views in an uninhibited fashion, recognizing that it's with a view of improving something, rather than with a view of blaming someone, and it's open and free flowing for that reason.
MR. SIMMONS:
Q. Okay. During your time in the health care system, did you observe an evolution towards that kind of a blame free approach to the way that events were handled within health care?
MR. WISEMAN:
A. Well, I mean, I don't know if I observed an evolution, it was something that I understood existed when I started working in the system,

Page 262

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

Page 263

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

Page 264

is in the context of clinical evaluation.
MR. SIMMONS:
Q. Yes.
MR. WISEMAN:
A. I've never heard it, you know, in the context of, although it's a principle that some may espouse, but I've never heard it talked about in the context of other management type decisions that would be made or decisions that would be made about other areas of operation where, you know, someone may do an evaluation and determine that, you know, this is wrong, somebody made a mistake, it should have been done this fashion and therefore, someone has to be held accountable for that. Then the context that I've been a party to discussions around it and in the context of any discussions that I would have participated in, has been in the context of clinical issues.
MR. SIMMONS:
Q. Yes, okay. Now you've told us just earlier today when you were asked some questions in relation to the Court hearing that took place in Supreme Court here about whether the two external review reports would be available for

Page 265

use in this hearing, you told us that government took no part, chose to take no part in that particular hearing, correct?

MR. WISEMAN:

A. That's true.

MR. SIMMONS:

Q. And did I understand you to explain, though, that the department understood that there was a legitimate issue to be addressed with considerations on each side, that was the protection of peer review quality assurance work verses the interest in open disclosure for the purpose of this inquiry. That was recognized when government made its position--made its decision not to participate in that Court hearing.

MR. WISEMAN:

A. That's right, I knew that, yes.

MR. SIMMONS:

Q. Okay, so from that point of view, government was, like others, I guess, looking to that decision for guidance as to what was the right thing to do in relation to those reports?

MR. WISEMAN:

A. With the understanding that the reports were

Page 266

being characterized as being peer review reports, yes.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. We were.

MR. SIMMONS:

Q. Okay, I have one question for you in relation to the relationship between the Board of Eastern Health and the Minister of the day and I'd like you to have a look at one exhibit and that's P-0099 please? Now this exhibit was put in when former Minister Ottenheimer was in that chair and it's a letter dated November 23rd, 2005 from Mr. Ottenheimer to Ms. Dawe, Chair of the Board of Trustees.

MR. WISEMAN:

A. Uh-hm.

MR. SIMMONS:

Q. I'm just wondering if you are familiar with this, if you have seen this letter before?

MR. WISEMAN:

A. Very recently, yes.

MR. SIMMONS:

Q. Until very recently, had you been aware that

Page 267

this letter existed?

MR. WISEMAN:

A. No.

MR. SIMMONS:

Q. Had you been aware that there had been a discussion between Minister Ottenheimer and the Chairs of the four Regional Health Authorities which lead to four letters like this going out setting out the Minister's expectations for their roles?

MR. WISEMAN:

A. No, I was not.

MR. SIMMONS:

Q. Have you had a chance to read through the letter and see what those expectations were?

MR. WISEMAN:

A. I have, yes.

MR. SIMMONS:

Q. How does that accord with your understanding of what the expectations were when you became Minister?

MR. WISEMAN:

A. They're similar.

MR. SIMMONS:

Q. Any significant differences? And you can

Page 268

scroll down and look at it, if you want.

MR. WISEMAN:

A. Maybe if I, I tell you I find it hard to read the screen, I'll tell you my age. See if I can find the hard copy. In general terms, yes.

MR. SIMMONS:

Q. Good, thank you.

MR. WISEMAN:

A. The reference to the Regional Health Authorities Act would, upon its proclamation you would probably strengthen this letter somewhat to reflect what's in the new Legislation.

MR. SIMMONS:

Q. Right. We heard from Ms. Dawe that her understanding of it was the new Board, when established for Eastern Health, that the intention was that it would govern itself as if the new Regional Health Authorities Act had actually been proclaimed in anticipation of that Legislation coming into force. Was that your understanding of the situation when you became the Minister as well?

MR. WISEMAN:

Page 269

A. I hadn't--I think I asked the question here and it was referenced to that particular point I think the way it was framed, would I have assumed that they were acting in that fashion, and I think my comment was given the fact they were created in 2005 and this Legislation came in around that same time, that people would have acted accordingly. But the reason I make the reference to the proclamation of that Act is that that Act strengthens, I believe, the authority that the Board Minister can exercise over the Board and this letter doesn't necessarily, you know -

MR. SIMMONS:

Q. Right, it doesn't spell it out in those terms.

MR. WISEMAN:

A. It doesn't spell it out in those terms that there would have been a greater degree of authority vested in that Legislation.

MR. SIMMONS:

Q. Okay, good, thank you. Now, I had a few more questions for you about the quality assurance and the way it works in the system and I'm going to suggest that for something like laboratory services, there's a number of

Page 270

places that we can look to to find a means for assuring the quality of the services provided and that one of those is in the form of accreditation. And through your position as Minister of Health and your previous experience in the health care system, I presume you would have some general concept of how hospital accreditation works, what it is and what sort of things come out of it.

MR. WISEMAN:

A. Some general notion.

MR. SIMMONS:

Q. Yes, and that would you have understood that accreditation is something that's done by some external body, such as the Canadian Council on Health Services Accreditation in this case, which now accredits Eastern Health, correct?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. And that that body would provide people from outside of the organization to come in and look at it, external reviewers of some sort, correct?

MR. WISEMAN:

Page 271

A. That's true, I fully understand, yes.

MR. SIMMONS:

Q. And that they would have a set of standards that they would use to compare the functioning of the organization they are looking at to some objective benchmarks that they bring with them.

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. And you would have had experience, I presume, at Peninsula's, for Peninsula's to go through accreditation like that, at the time?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. And normally there would be a report that would come back which would comment on how the organization measures up against those standards?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. And typically there would also be recommendations, would there not?

Page 272

MR. WISEMAN:

A. Typically there always is.

MR. SIMMONS:

Q. There always is.

MR. WISEMAN:

A. I shouldn't say "always", I've never, I wouldn't go that far, but as I understand it, there will be a rare exception where you can have accreditation with no recommendations.

MR. SIMMONS:

Q. Right. And would it be reasonable then to assume as well, to say as well that part of the purpose of the accreditation is to find where those recommendations can be made for the purpose of continuously improving the organization that's being reviewed and being accredited.

MR. WISEMAN:

A. Exactly. That's what I understand.

MR. SIMMONS:

Q. Okay, now do you know if the accreditations that were done of the Health Care Corporation of St. John's in the ten-year period prior to the creation of Eastern Health, if those institution wide accreditations paid any

Page 273

particular attention to laboratory services or do you know to what extent they covered laboratory services?

MR. WISEMAN:

A. I understand that they would have been, you know, these accreditation processes would have looked at all aspects of the operation.

MR. SIMMONS:

Q. Uh-hm.

MR. WISEMAN:

A. So they would have looked at laboratories, they would have looked at other departments. As I understand that process, the--and I've learned this in recent months -

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. - that the most recent or the recent accreditation by--of Eastern Health through that process was back early last fall and there was a new set of standards applied to the laboratory in that accreditation process, as I understand it. The council had come up with a new set of standards for lab services and they were used in the accreditation

Page 274

process for Eastern.

MR. SIMMONS:

Q. Right. And had you been informed that in fact Eastern Health was part of a pilot by CCHSA for the implementation of a set of new more detailed standards for laboratory services?

MR. WISEMAN:

A. I was aware they were the first, I wasn't certain that they were designated a pilot.

MR. SIMMONS:

Q. Yes. So you were aware that they were among the first and are you aware that prior to this, for the period prior to this, the CCHSA accreditations paid much less attention to laboratory services than they did in the last accreditation?

MR. WISEMAN:

A. I would assume that they did because if they had new ones, that meant that they were new and improved, I assume.

MR. SIMMONS:

Q. Okay. And you've told us a little while ago that the Province is now going to pursue some form of accreditation for laboratories in Newfoundland and Labrador.

Page 275

MR. WISEMAN:

A. That's true.

MR. SIMMONS:

Q. And I presume that would be something separate and apart from the general accreditation of the institution but would be directed particularly towards health care laboratories, would it?

MR. WISEMAN:

A. It would be, yes.

MR. SIMMONS:

Q. And you're aware that such accreditation exists in Ontario?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. And are you aware that it exists in some form in British Columbia and perhaps in other parts of the country?

MR. WISEMAN:

A. I understood in other jurisdictions it existed as well, but I wasn't certain which ones.

MR. SIMMONS:

Q. Okay. When did the consideration of looking at provincial accreditation for hospital

Page 276

laboratories first come up? When did government start to think and talk about this topic?

MR. WISEMAN:

A. As a result of this, our discussion internally in recent months around ER/PR, what happened within Eastern Health and what we might want to do to strengthen diagnostic services on a go-forward basis.

MR. SIMMONS:

Q. Right, so it's something that arose out of this experience, rather than being under consideration at any time earlier?

MR. WISEMAN:

A. Yes, now it may have been discussed at some prior time within certain circles, but clearly it wasn't a part of any discussion that I was ever a part of until recently when we made the decision to do it.

MR. SIMMONS:

Q. So would your expectation be that in a similar way to the way the institution benefits from recommendations from an institution-wide accreditation, that laboratories in this province will benefit, and quality will

Page 277

benefit from having a provincial accreditation system that provides constructive recommendations to it?

MR. WISEMAN:

A. That would have been the objective here, yes.

MR. SIMMONS:

Q. And that up until now, well, even today, our laboratories in the province don't have that benefit because they don't have that provincial accreditation system?

MR. WISEMAN:

A. That's true.

MR. SIMMONS:

Q. Okay. Now I'm going to suggest that another source of ensuring quality in environment-like laboratory services is professional accreditation for the people that do the work, people like laboratory technologists. I have to join the Law Society to be here and they have standards that I have to meet and I can be disciplined by them if someone makes a complaint. Nurses have similar associations. Physiotherapists -- we can name many. Do laboratory technologists have that level of standard setting governance in this province?

Page 278

MR. WISEMAN:

A. They're not a self-regulated body in this province.

MR. SIMMONS:

Q. No, okay. Does the provincial government have any licensing of or other form of regulation of laboratory technologists in the province?

MR. WISEMAN:

A. As I understand it, the employers in the province require laboratory technologists to be registered with the Canadian --

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. There's a national association. I forget the name of it now.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. But I understand employers as a condition of employment require people to be eligible for registration for that body.

MR. SIMMONS:

Q. All right, and -- so in Newfoundland and Labrador then, there's no legislative or

Page 279

statutory system of governance for laboratory technologists that requires that they have any particular qualification or meet any particular standard in order to work in the province?

MR. WISEMAN:

A. That would be dictated by the employers.

MR. SIMMONS:

Q. Is there any consideration being given to developing any kind of professional regulation that the province has some role in for laboratory technologists?

MR. WISEMAN:

A. There is. There's been an effort and request by -- there's a group of technologists who have organized themselves in recent year to -- in fact, some of the preliminary work may go back before then, but discussions I've had with them date back about a year or so ago when I was approached by a lady who was representing that group to have a conversation like that about pursuing that kind of regulatory structure, and one of the things that we're currently looking at right now is there's a number of disciplines in the

Page 280

province who, in practise, don't have that kind of regulatory structure. Some of them are small groups, some of them are large groups, and we have a large number that already exists and are structured around their own legislation like that now. I have officials in the Department as we speak reviewing a process to create an umbrella piece of legislation that might encompass a variety of disciplines that might be regulated in that fashion. Not every discipline has the mechanisms in place to administer their own regulatory regime.

MR. SIMMONS:

Q. Right.

MR. WISEMAN:

A. There's significant costs associated with it, and there's capacity issues with respect to discipline and others, so we're looking at how we might do that now with a view of having an umbrella piece of legislation that might encompass a variety of disciplines that are not now registered and have expressed some interest in, and a couple that we may want to do anyway.

Page 281

MR. SIMMONS:
Q. Now you've told us that the health care institutions in this province will only employ laboratory technologists who have passed the national examination with their national organization, so I'm not in any way questioning any of the qualifications of our technologists, but would you agree with me that having a professional association for a group like that tends to promote things like education, research, setting of carefully considered standards for their work?
MR. WISEMAN:
A. They tend to do, yes.
MR. SIMMONS:
Q. Now aside from a system of accreditation of laboratories or some provincial system of licensing for technologists, is there any other legislation or government regulation of any sort that exists now that says what types of standards a hospital laboratory is supposed to meet?
MR. WISEMAN:
A. Not that I'm aware of.
MR. SIMMONS:

Page 282

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

Page 283

A. Could be, yes.
MR. SIMMONS:
Q. In this case, we know that for the laboratory at Eastern Health at the General Hospital site, that we had those two peer reviews done in 2005 and renewed in 2006, produced in the recommendations that you had spoken about earlier?
MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. Now I'm going to suggest that the other -- one other source of quality --
THE COMMISSIONER:
Q. Or non-peer reviews as Justice Dymond might say?
MR. SIMMONS:
Q. Yes. We'll call them external reviews, as Ms. Chaytor suggests.
THE COMMISSIONER:
Q. Thank you.
MR. SIMMONS:
Q. And I'm going to suggest another source, of course, is internal to the organizations themselves. So in a sense, there's a reliance

Page 284

on Eastern Health to take quality initiatives within its own organization, correct?
MR. WISEMAN:
A. That's true.
MR. SIMMONS:
Q. Yeah, and would you agree with me as well that the extent to which it can take its own quality initiatives would depend, at least in part, on the resources available to it to do that?
MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. Now you mentioned in your main evidence that you had read the report -- the review of the laboratory that was done past December, the report delivered this past December by the Ontario Accreditation Program. I think the acronym is QMP-LS, Quality Management Program Laboratory Services, affiliated I believe with the Medical Association in Ontario.
MR. WISEMAN:
A. Uh-hm.
MR. SIMMONS:
Q. Do you know how that report came to be

Page 285

commissioned and if the Department played any role in obtaining it?

MR. WISEMAN:

A. I'm not certain. I don't know.

MR. SIMMONS:

Q. Okay. If I were to suggest that that had been an initiative of Eastern Health itself, would that be contrary to anything that you're aware of?

MR. WISEMAN:

A. Not that I'm aware of. Either way, I'm not really certain how it originated.

MR. SIMMONS:

Q. Okay. Now you've had occasion to read through that report, and you've referred already I think to some of the conclusions expressed at the end of it?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. Has the Department at any time since this issue was first notified to it in July of 2005, considered bringing in its own reviewers or having any kind of its own review done of the immunohistochemistry laboratory at Eastern

Page 286

Health?

MR. WISEMAN:

A. I can only speak to since I've been Minister in January of last year.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. I know I haven't turned my head to that notion.

MR. SIMMONS:

Q. Right.

MR. WISEMAN:

A. The only thing i have done recently since I've read the report, I've had a conversation with my Deputy about my desire to explore with Eastern Health the possibility of having a -- because some time has lapsed and we have now the report of December that you referenced a moment ago --

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. And in that there is a series of recommendations.

MR. SIMMONS:

Page 287

Q. Yes.

MR. WISEMAN:

A. I've just recently had a discussion with my Deputy around my desire to have explored with Eastern Health the notion that we might have, you know, the individual who did the last review for them, to come back and provide a further update of the status of the implementation of the recommendations and how they're working, while at the same time having a look at the process of implementing the recommendations of what was in the December report as a progress on the work that had been done by those two reports previously.

MR. SIMMONS:

Q. Right, and the report that was done by the QMP-LS organization from Ontario, from reading the report, do you understand that to be an exercise of taking the standards that they would use if accrediting an Ontario laboratory and applying them against the laboratory here?

MR. WISEMAN:

A. That's what I understood.

MR. SIMMONS:

Q. And you've quoted from the report that their

Page 288

conclusion was that the Authorities could rely on the work of this laboratory and it was functioning at a level of a comparable laboratory in Ontario?

MR. WISEMAN:

A. I think there was three references I made from the report.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. One was with respect to the comparable labs in Ontario. The other one was the IHC laboratory is producing good results which would be interpretable anywhere, and the administration -- the third one, the administration should be complimented at this time that IHC laboratory is operating at a high quality control ER/PR program. Those are my two quotes.

MR. SIMMONS:

Q. Does your Department, and you as Minister, now share that confidence?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. And I presume that since you became Minister,

Page 289

and particularly since you focused your attention on this issue in May of 2007, had you had any lack of confidence in the work being done in that laboratory, that you would have acted?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. And you have not had to?

MR. WISEMAN:

A. No.

MR. SIMMONS:

Q. Now you were asked a fair number of questions about the recommendations that had come from the external reviews done by Dr. Banerjee and Ms. Wegrynowski, and in the course of that you were shown a spreadsheet that's at P-050, please, and I believe that's one from April of 2007, which I understand to be recommendations extracted from those two reports and progress on the implementation of those. Ms. Chaytor went through with you and identified each recommendation that was indicated as being something other than completed. Do you recall that?

Page 290

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. I'm not going to go through them all, but I'm just going to point out -- take a look at a couple. The first one that's not marked completed is number five -- I'm sorry, the first one that's not marked completed is number three, which it says is being discussed at that point. It says, "Consideration to use rabbit monoclonal antibody SP-1 for ER testing", and I don't expect you to know anything about the technical side of all that, but if I were to suggest to you that at the time these reports were prepared, the SP-1 antibody was relatively new that some labs were moving to, but most labs had not, including Dr. Banerjee's lab, and that the suggestion was that this lab consider moving towards it, would you consider that this was still only being discussed in 2007 to be a matter of concern to you?

MR. WISEMAN:

A. I mean, I -- it's difficult for me to -- as you're framing the question, it's incomplete

Page 291

information that I don't have, so obviously I wouldn't be able to draw a conclusion.

MR. SIMMONS:

Q. Right, okay, and number five, "Pathologists and educational and scientific conferences" and it says it's "ongoing". Now a recommendation like that to attend educational and scientific conferences, would you expect that that's ever complete or is that something that goes on forever?

MR. WISEMAN:

A. It'll always be ongoing.

MR. SIMMONS:

Q. So you wouldn't want to see it say complete as if that was not going to continue, as if that had been done and would not continue. Number six, "Pathologist assistants hired to standardize grossing procedures, and the current status is three hired to date, fourth to start in August '06", although this recommendation sheet is dated '07, and under completion date, it says, "Training started May, 2006". Now did you understand that these pathologist assistant positions were new ones in the province and that there had not

Page 292

previously been people carrying out the roles that these pathologist assistants carry out in a pathologist lab?

MR. WISEMAN:

A. I gathered that from the way it was written in the report itself that these would be new positions.

MR. SIMMONS:

Q. Right, so would it be reasonable to expect that there would be some period of training and implementation of new positions like that?

MR. WISEMAN:

A. As with any new position, I assume, yes.

MR. SIMMONS:

Q. So would it be any significant cause of concern if that training was still ongoing by April of 2007?

MR. WISEMAN:

A. Training is one of these things -- implicit in some of the other recommendations, training needs to be ongoing and continuous. So the training piece and continuing education is something that's always ongoing. The concern that I'd have would be if someone had been hired two years ago and they're still trying

Page 293

to be orientated to the Department and trained. So there's a reasonable time period that would be considered natural and normal for training to occur.

MR. SIMMONS:

Q. So this spreadsheet is dated April 26th, 2007. I believe you said it came to your Department around the end of May in 2007.

MR. WISEMAN:

A. The one that I had indicated came to the -- a spreadsheet did come to the Department.

MR. SIMMONS:

Q. Oh, I'm sorry, yes --

MR. WISEMAN:

A. The end of May, and the one that I received was dated in 2006.

MR. SIMMONS:

Q. Right. So from that point on up to the current day, have you or the people in your Department had any concern about the adequacy of Eastern Health's actions in respect of the recommendations that came from those external review reports?

MR. WISEMAN:

A. I don't know if anyone has taken each one of

Page 294

these 52 recommendations and recently went through them and wanted to know the status of them.

MR. SIMMONS:

Q. Yeah.

MR. WISEMAN:

A. I commented a moment ago in your -- that I had a recent discussion with my Deputy around, you know, wanting maybe to have a conversation with Eastern Health with respect to looking at having someone review the recommendations.

MR. SIMMONS:

Q. Uh-hm.

MR. WISEMAN:

A. To see how successfully they'd been implemented, and marry then with the recommendations of the accreditation in December, but beyond that I haven't had a discussion around these individual recommendations.

MR. SIMMONS:

Q. Yeah, it's now April, 2008.

MR. WISEMAN:

A. Yeah.

MR. SIMMONS:

Page 295

Q. And you became aware of at least what the recommendations were in May of 2007. I presume that had there been any kind of concern about whether the recommendations had been dealt with in a manner sufficient to allow that lab to continue operating, that there would have been some action taken by your Department and by you long before this?

MR. WISEMAN:

A. As I've already indicated in evidence here, the understanding that I was given last year in May was that the recommendations had been implemented.

MR. SIMMONS:

Q. Uh-hm, okay. I had some questions for you about the communication issues with patients, and first of all, I think we should try and make it clear that did you at any point ever believe or have it suggested to you that either of the four regional health Authorities had ever decided not to communicate any information about retesting to the patients affected, to the individual patients?

MR. WISEMAN:

A. My understanding was up -- well, the early

Page 296

part of June last year, that all patients had been contacted.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. So the notion that the Boards would have contemplated or had a discussion around not doing it, I hadn't given it any thought up to that point.

MR. SIMMONS:

Q. No, and neither has it ever been indicated to you that at any point along the way there was any decision made that there was a group of patients who we got test results for, but we're not going to contact them?

MR. WISEMAN:

A. I think there's been some discussion, as I've since learned, that there were some initial priorities attached to contacting those who had their test results changed.

MR. SIMMONS:

Q. Uh-hm.

MR. WISEMAN:

A. And then there was a discussion around focusing on those that were still alive versus

Page 297

making contact with the families of the deceased patients.

MR. SIMMONS:

Q. Uh-hm.

MR. WISEMAN:

A. So there was some -- as I understand it now, some discussions around what the sequence of things would be, what calls would be made and what sequence.

MR. SIMMONS:

Q. Yes. So the issues -- I'm going to suggest that the issues, and there definitely are issues, there are important and serious issues that have come out of the whole communication piece to the patients, and issues which a lot of lessons have to be learned from. I'm going to suggest to you that the issues that come out of it are ones of the effectiveness of the process, not what was intended to be achieved by the process, because what was intended to be achieved was to communicate information to all the patients who were affected. The problem is that the effectiveness of how that was carried out has not been what was intended. Is that a fair statement? Would

Page 298

you agree with that as being your understanding of what happened?

MR. WISEMAN:

A. To the extent that I would acknowledge that I have no indication that anyone had a clear calculated decision not to call certain people, but in terms of process, I'm not sure that I necessarily agree with how you're trying to characterize the actions here, but --

THE COMMISSIONER:

Q. I'm sorry, I maybe have misunderstood what the question was, but Mr. Simmons, are you putting to the witness that there always was an intention to contact all patients, including deceased?

MR. SIMMONS:

Q. You're correct, Madam Commissioner, if we leave aside the issue of the --

THE COMMISSIONER:

Q. The deceased, for the moment.

MR. SIMMONS:

Q. All patients who had --

THE COMMISSIONER:

Q. So we're talking now about all living

Page 299

patients.

MR. SIMMONS:

Q. Who had a retest result to be communicated to them. You are correct, the deceased is a separate issue and that got -- the decision about contacting the decision got made. All the deceased families, or making the information available to them got made later, but for the living patients, my understanding from everything that I've heard and seen is that the intention was always to contact every living patient who had a retest results to let them know either that they had been retested and there was no change, or they had been retested and there was a change, and that different means of communication were going to be used to effect those things.

THE COMMISSIONER:

Q. And the implication of the way you phrase the question is that they would be contacted after the retest was done?

MR. SIMMONS:

Q. Well, the --

THE COMMISSIONER:

Q. Because you said contacted to say, "You have

Page 300

been retested and".

MR. SIMMONS:

Q. Yes.

THE COMMISSIONER:

Q. That's the difficulty with the question. There are so many little variations within it.

MR. SIMMONS:

Q. Well, the point is there was no group of patients, living patients, for whom there was a decision made that we're not going to contact them with the results?

MR. WISEMAN:

A. Well, just -- I don't want to suggest something that may or may not have happened, but the picture before us is that initially I was advised that all patients were contacted.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. So therefore, I would assume from that then the decision had been made to call all patients because the advice I was given was that they all were.

MR. SIMMONS:

Q. Uh-hm.

Page 301

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

Page 302

comfortable saying that there was no decision made to leave out a group or to include a group.
MR. SIMMONS:
Q. Okay. Now, I had some--I wanted to talk to you a little bit, too, about the process of initially identifying those patients who had samples who were to be retested. And I know you weren't the Minister of Health at that time, but do you--have you had some understanding or has it been explained to you about what some of the steps were that had to be taken to identify those patients?
MR. WISEMAN:
A. The steps, no, I don't. As I understood it, the intent was to identify those that had negative results during that period of 1997 to 2005.
MR. SIMMONS:
Q. Right.
MR. WISEMAN:
A. What that entailed to actually identify those numbers I have no idea, nor have I asked because I just assumed there was a process.
MR. SIMMONS:

Page 303

Q. Right. You were aware, though, that they were patients from all regions of the province?
MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. And from a variety of institutions and boards that existed prior to the amalgamations of 2005?
MR. WISEMAN:
A. And they all would have had their initial test done at the same site.
MR. SIMMONS:
Q. Yes. And but that the--were you aware that the samples would have been prepared at various -
MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. - facilities in the province, transported to the laboratory at the General Hospital site at which a slide was prepared and then the slides gone back to those other institutions where the pathologist would read the results of the slides?
MR. WISEMAN:

Page 304

A. I became aware of that, yes.
MR. SIMMONS:
Q. Yeah, okay. So that complete records of those testing transactions would not have existed in one place in 2005 when it was necessary to try to identify who had had a test done and what the results of those tests were? Were you aware of that?
MR. WISEMAN:
A. If all of the tests were done at one site, the record of that test would have been contained at that site. The originating specimens would have come from a variety of locations from within the other three authorities, but the actual initial tests would have been done at one site, so there would have been a centralized record keeping of the tests themselves.
MR. SIMMONS:
Q. Right.
MR. WISEMAN:
A. I assume.
MR. SIMMONS:
Q. Yes. And are you aware that the results of reading the slides and determining whether the

Page 305

tests were positive or negative would be contained in the records at the various institutions from which the samples originated and not at the central laboratory testing site?

MR. WISEMAN:

A. They went back there for reporting and -

MR. SIMMONS:

Q. Yeah. So in order to do that initial patient identification piece it was necessary to involve all locations from which the samples had been reported? In order to identify those tests which had been negative?

MR. WISEMAN:

A. Yes (unintelligible) yes.

MR. SIMMONS:

Q. Okay. And even within the St. John's area initially in '97 the different acute care hospitals in St. John's maintained separate electronic record keeping systems? You're familiar with the Meditech system, I guess?

MR. WISEMAN:

A. Some knowledge -

MR. SIMMONS:

Q. They probably had that in Clarenville when you

Page 306

were there?

MR. WISEMAN:

A. Some knowledge of it.

MR. SIMMONS:

Q. And that were you aware that St. Clare's, the Grace and the General each had their own separate Meditech system and which didn't work exactly the same way and that once the-- eventually the hospitals merged, the Meditech system merged and operated on a go forward basis rather than merging historical data, were you aware of that level of complexity in it?

MR. WISEMAN:

A. I mean, as you're sharing it now it makes some sense, but I didn't get into that level of detail last year.

MR. SIMMONS:

Q. Right, okay. So would it surprise you, then, that there would have been a level of complexity involved in even initially identifying which tests had produced a negative result in order to try to identify everybody that needed to be retested?

MR. WISEMAN:

Page 307

A. Complexity defined by multiple data sources, yes.

MR. SIMMONS:

Q. Similarly, when it comes to notifying patients of the results that all four regional health authorities would have had to have been involved in that process? In order to know where the patient was, how to contact them, what their address was, phone number, who the physician was who was dealing with them now, in order to be able to carry out that process it required steps to be taken or measures to be taken by all four regional health authorities?

MR. WISEMAN:

A. Yes. I now understand that the other authorities were involved in that initial process, yes.

MR. SIMMONS:

Q. Right. And did you understand that while some of the patients who had been retested may still have been under the care of physicians at the Cancer Centre which by 2006, I think, was part of Eastern Health, but previously had been a separate institution, many patients had

Page 308

been discharged from the care of an oncologist or a cancer physician and were being followed in other parts of the province, either by a family physician or some other, some other doctor? Were you aware of that situation?

MR. WISEMAN:

A. Yes, I would understand that would be the situation.

MR. SIMMONS:

Q. Yeah. And that factors like that created a layer of complexity when it came to identifying and tracking down and getting the information to either the responsible physician if there was a change in test result or the patient if there was no change in test result and that all the information necessary to affect that wasn't readily available in Eastern Health's records that reliance on other sources had to be used?

MR. WISEMAN:

A. I understand that, yes.

MR. SIMMONS:

Q. Now, when in, I guess it was June of 2007 you involved Mr. Thompson and the Newfoundland Labrador Centre for Health Information, NLCHI,

Page 309

I think they call it, in the database project, was that something that you initiated and tasked them to do, did that originate with you?

MR. WISEMAN:

A. Originated as--it grew out of the discussion that Mr. Thompson and I had, yes.

MR. SIMMONS:

Q. Okay. And Mr. Thompson then, I believe -

MR. WISEMAN:

A. It grew out of--just elaborate on that particular point.

MR. SIMMONS:

Q. Yeah.

MR. WISEMAN:

A. The initial thinking was that we would--and I gave evidence of this earlier, that we had a couple of officials from my Department go in to Eastern Health to sit down and to look at the records themselves and see if they could piece together the audit trail, the trail of documentation to be able to validate the information around communication. And when they came back to the office and provided an update, they weren't--you know, it was based

Page 310

on the advice that they had and the indication that they provided is that there was no way that they had an ability to be able to just to go in and do that kind of audit because, you know, the information was recorded in a multiple of fashions.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. And it really hadn't been--even though it may have been stored in a variety of locations around the province, when it got pulled together, it didn't get pulled together in any kind of structured format and recorded in any kind of structured format to allow anyone to do an audit of it. So there was a recognition that we needed to have a reconstruction here of the database and the people with that kind of expertise was the centre.

MR. SIMMONS:

Q. Okay. So at that point the information about who had been contacted, when and how and what the results were hadn't been collected into a single database and it was the Centre for Health Information personnel with, under some

Page 311

direction from Mr. Thompson who were asked by your Department to perform that task?

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

Q. Yeah. And are you aware that at that time Eastern Health had been moving towards doing an analysis of this data itself but in light of the initiative taken by your Department agreement was reached between the two that NLCHI would do the work and share the results with Eastern Health?

MR. WISEMAN:

A. I hadn't been aware of that. It quite possibly happened, but that's something Robert Thompson would have had a discussion with the CEO of Eastern at that time.

MR. SIMMONS:

Q. Right. And from that point on, then, the collection of the data from the original sources at Eastern Health and the other health authorities was undertaken primarily by NLCHI, who were the source that were compiling that data?

MR. WISEMAN:

Page 312

A. They were doing the compiling, but the source was the authorities.

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. They were basically relying on the source of information from the authorities to do that.

MR. SIMMONS:

Q. Right. And through that process, which has continued since June of 2007 up until even today and I presume continuing on, it has been the Centre for Health Information, the people working with it whom have been relied upon to identify any gaps in notification and bring to the attention of the authorities any people who they determine or suspect have not already been notified?

MR. WISEMAN:

A. That's true.

MR. SIMMONS:

Q. Correct. So it has, from June the authorities have been looking to the work that NLCHI has been doing to identify those people so that they could then deal with the contact information?

Page 313

MR. WISEMAN:
A. Exactly.
MR. SIMMONS:
Q. Right, okay. And it appears then that since there was a press release in November which identified a number of people who had issues about whether they had been--for which whom there were issues about whether they had been contacted and another press release in February and a recent one now that it has taken some time for NLCHI to do the work to identify those people?
MR. WISEMAN:
A. That's right.
MR. SIMMONS:
Q. Okay. And as soon as NLCHI has been able to identify those people, those about whom there are questions, have the authorities been notified immediately so that they could then try to act on making that contact?
MR. WISEMAN:
A. That's what I understand, yes.
MR. SIMMONS:
Q. Okay. Can we have a look at P-0244, please? This was the draft of the technical briefing

Page 314

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

Page 315

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

Page 316

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

Page 317

MR. SIMMONS:
Q. Do you know what happened between the 19th and the 21st for the number of people who were not contacted as being reported in the report to be reduced in the way that it was?
MR. WISEMAN:
A. I don't know specifically. I suspect it was a process that was ongoing, as they identified more documentation to confirm that contact had been made, they came off the un-contacted list.
MR. SIMMONS:
Q. Okay. So you suspect that as the first draft report went out, the health authorities were able to then respond to NLCHI, which resulted in NLCHI changing the number -
MR. WISEMAN:
A. Right.
MR. SIMMONS:
Q. - of people that came off the list?
MR. WISEMAN:
A. Yeah, that sounds like a logical answer, but I can't speak to it directly.
MR. SIMMONS:
Q. Okay.

Page 318

THE COMMISSIONER:
Q. Wait now, I understood we're talking two different things here and I'm not sure. I was understanding the witness to say that he believed that Eastern Health was advised as persons were discovered to have not been.
MR. SIMMONS:
Q. Yes.
THE COMMISSIONER:
Q. You seem to be asking a question about whether or not Eastern Health, based on Eastern Health not -
MR. SIMMONS:
Q. The authorities.
THE COMMISSIONER:
Q. - having the information or other authorities not having the information until it came out in this form.
MR. SIMMONS:
Q. Um-hm.
THE COMMISSIONER:
Q. That to me is a different answer to a different question, so which one is it?
MR. SIMMONS:
Q. Okay. Well, we do have--we know in the first report we added up to be something like 80 people were in these categories of not contacted or uncertain if they were contacted and on the second of the reports it's down to 49?
MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. And I've asked you if you could provide any explanation or if you have any knowledge of what process might have happened between the two times to account for that change.
MR. WISEMAN:
A. And I said I don't really know exactly what happened. A logical answer would be that, you know, during that period they recognized or been able to provide the documentation to suggest that they had, in fact, been contacted so they weren't reported on this data as having been no contact.
MR. SIMMONS:
Q. Okay.
MR. WISEMAN:
A. And that's an assumption on my part because it sounds logical.

Page 319

Page 320

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

Page 321

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

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

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

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

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

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

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

Page 322

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

MR. WISEMAN:

A. Uh-hm.

MR. SIMMONS:

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

MR. WISEMAN:

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

MR. SIMMONS:

Q. Yes.

MR. WISEMAN:

A. Yes.

MR. SIMMONS:

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

Page 323

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

MR. WISEMAN:

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

MR. PRITCHARD:

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

CHAYTOR, Q.C.:

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

MR. SIMMONS:

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

THE COMMISSIONER:

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

Page 324

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

CHAYTOR, Q.C.:

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

THE COMMISSIONER:

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

MR. SIMMONS:

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

MR. WISEMAN:

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

MR. SIMMONS:

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

Page 325

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

Page 326

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

Page 327

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

Page 328

Eastern Health for not having released this other information in December of '06.
MR. WISEMAN:
A. I was yes.
MR. SIMMONS:
Q. Yes. Did anyone from your department then draw to your attention or say to you, we knew they hadn't released this information?
MR. WISEMAN:
A. No, they didn't.
MR. SIMMONS:
Q. Did you ask or inquire as to anyone in your department had been aware of the fact that that information had not been released?
MR. WISEMAN:
A. I didn't ask the question directly, no.
MR. SIMMONS:
Q. Okay. Knowing that there was significant media coverage of that event in December of '06, can you conceive of any way--and knowing the way that officials in your department follow media coverage, is there any way that you could conceive of them not having been aware that Eastern Health had chosen not to release this more detailed information?

Page 329

MR. WISEMAN:
A. I mean, I'd be speculating then and I can't do that because I don't know.
MR. SIMMONS:
Q. Right. Because you were publicly critical of Eastern Health about this.
MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. Did you give any consideration to the role of the people in your own department and whether you should be looking at their role in not taking some action at that time to communicate more information to the public?
MR. WISEMAN:
A. It's a fair question that you pose, but my comment was about the people who did take an action and the people did actually release the information and the people who released the information were Eastern Health in December and it was their decision to release what they released and not to include some other pieces of information. And it was that decision that I was critical of. The issue that you're raising is whether or not that someone in my

Page 330

department also had knowledge that it hadn't been released and I don't know the answer.
MR. SIMMONS:
Q. Okay. Neither did you make any inquiries or neither did you consider whether that was something that you should inquire about -
MR. WISEMAN:
A. I didn't make the inquiry, no.
MR. SIMMONS:
Q. Okay. Now, in May of '07, around that time, you met with Mr. Tilley and others from Eastern Health, I believe, and you discussed what had happened with the media briefing in December of '06 and you've told us that you were told that Eastern Health had been acting or influenced or somehow limited by legal advice. I think that was the way that you described it.
MR. WISEMAN:
A. Yes.
MR. SIMMONS:
Q. Now, can you recall whether what you were told was--and the distinction here--that there had been legal advice not to release those numbers or whether you were told that it was because

Page 331

of outstanding litigation that they didn't release more numbers? Now, that may be a fine distinction, but there is a distinction there.
MR. WISEMAN:
A. And my--there is and I wouldn't be able tell you which of the two that was relevant here, nor do I know if actually the distinction was made. My characterization of it as being legal advice was that some--a lawyer acting in their interest, gave them some advice to--and that's inform--what they actually released in December.
MR. SIMMONS:
Q. Yes.
MR. WISEMAN:
A. The distinction that you're making, I'm not certain of that distinction. I'm not certain that we actually made that distinction in our discussion.
MR. SIMMONS:
Q. Would you have taken--whether what was told to you was that it was the existence of litigation that limited what they felt they could disclose or that it was specific advice from a lawyer, would you have even recognized

Page 332

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

Page 333

litigation. And you weren't told that we were advised by a lawyer in this case not to release this specific information.

MR. WISEMAN:

A. That's your suggest--I mean, I won't -

MR. SIMMONS:

Q. Can you say that one or the other is right or wrong?

MR. WISEMAN:

A. No, my--I still stand by my earlier comment that I understood from the comments made by Eastern that day and that they--what was in that release and what was in or not in that release was influenced by a legal opinion they had.

THE COMMISSIONER:.

Q. Mr. Simmons, just to make sure I understand the question, you're asking the witness whether or not he recalls whether the reason he was given was that specific advice had been sought in respect of this issue, as opposed to some generic belief that in these circumstances, this is what they did?

MR. SIMMONS:

Q. Correct, Madam Commissioner.

Page 334

THE COMMISSIONER:

Q. And I'm understanding the witness to say you didn't make that distinction and you're unsure?

MR. WISEMAN:

A. The understanding that I had was on the basis of legal advice that they had.

THE COMMISSIONER:

Q. Okay.

MR. WISEMAN:

A. Whether it was the legal advice that was given to them in a generic way for all circumstances, such as these in the future, or whether it was legal advice with respect to a very specific case at hand, I don't know, but clearly we were talking about the very specific issue at hand and I wouldn't have made that distinction that this was a generic piece of advice given some years earlier.

THE COMMISSIONER:

Q. All right, thank you. Mr. Simmons, it's getting near the point for break. If you're close to completing, then we'll push on. If you're not, then we'll adjourn until the morning.

Page 335

MR. SIMMONS:

Q. Two or three other things, it wouldn't take me too long, but since it's ten to five, it may be better to adjourn now and that way I can maybe be a little more focused on them in the morning.

THE COMMISSIONER:

Q. All right, thank you. Can I do the rounds of the room before we go because there is another witness who we do have to advise whether or not they show up at what time. Mr. Browne?

MR. BROWNE:

Q. I don't have my questions, I have about nine or ten questions relatively secluded to one area, so I don't anticipate being ten minutes, fifteen minutes.

THE COMMISSIONER:

Q. All right, Mr. Eaton? I'm not holding you to anything you say to me this afternoon, except a rough estimate. You can change your mind in the morning.

EATON, Q.C.:

Q. I don't believe we will have any questions.

THE COMMISSIONER:

Q. All right, thank you. Ms. Newbury?

Page 336

MS. NEWBURY:

Q. I expect I'll probably be about twenty minutes or so.

MS. TAYLOR:

Q. My estimate would be similar to Mr. Browne's, ten or fifteen minutes.

MR. PIKE:

Q. I should be less than ten, Commissioner.

THE COMMISSIONER:

Q. All right.

MR. PRITCHARD:

Q. I'll be twenty, twenty-five minutes, Commissioner.

THE COMMISSIONER:

Q. Okay then, we can all judge ourselves accordingly. Thank you very much, I'm afraid, Minister, we're going to have to ask you to come back in the morning. 9:30?

Upon conclusion at 4:55 p.m.

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the Commission of Inquiry on Hormone Receptor Testing, heard on the 14 day of April, A.D., 2008 before the Honourable Justice Margaret A. Cameron, Commissioner, at the Commission of Inquiry, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 14th day of April, A.D., 2008

Judy Moss

-B-

-C-

-J-

-K-

-L-

-Q-