

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 17, 2008

Appearances:

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1 THE COMMISSIONER:

2 Q. Mr. Coffey.

3 COFFEY, Q.C.:

4 Q. Thank you, Commissioner.

5 MR. GEORGE TILLEY, EXAMINATION-IN-CHIEF BY BERNARD

6 COFFEY, Q.C. (CONTINUED)

7 COFFEY, Q.C.:

8 Q. Good morning, Mr. Tilley.

9 MR. TILLEY:

10 A. Good morning, sir.

11 COFFEY, Q.C.:

12 Q. Mr. Tilley, late yesterday you were telling us
13 that you’ve learned recently that after you
14 left your office and, I suppose, someone going
15 in there and rearranging it or tidying it up,
16 found an envelope addressed to John Abbott
17 that contained the external review reports?

18 MR. TILLEY:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. And you’ve indicated that a day or so before
22 Mr. Abbott left his position as deputy
23 minister that he had contacted you and asked
24 for a copy of the reports and you were in the
25 process of complying with his request?

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Certificate

1 MR. TILLEY:

2 A. Yes, sir.

3 COFFEY, Q.C.:

4 Q. I take it you had no hesitation in sending
5 them to him?

6 MR. TILLEY:

7 A. No, sir.

8 COFFEY, Q.C.:

9 Q. And that was despite the fact that they were
10 viewed as peer reviews?

11 MR. TILLEY:

12 A. No, I saw the government, Department of
13 Health, in particular, as really sort of an
14 extension of this process and my expectation
15 would be that that information would be kept
16 in confidence in that environment.

17 COFFEY, Q.C.:

18 Q. I understand that you remained in your
19 position for about five weeks after Mr. Abbott
20 left?

21 MR. TILLEY:

22 A. That’s correct.

23 COFFEY, Q.C.:

24 Q. Are you able to tell the Commissioner, explain
25 to the Commissioner why the envelope was still

Page 5

1 on your desk five weeks later?

2 MR. TILLEY:

3 A. I've been trying to piece that together in my

4 mind. I would have secured that information

5 in one of my drawers in my desk that I had the

6 ability to lock at the end of the day. My

7 belief is is that it ended up in a drawer that

8 I didn't use that often. The month of June

9 and July were very hectic months and it just

10 didn't cross my mind from there on.

11 COFFEY, Q.C.:

12 Q. With respect to that, why, I mean, if it's in

13 an envelope with Mr. Abbott's name on it, why

14 wouldn't you just put it in the mail then?

15 MR. TILLEY:

16 A. That would have been the intent.

17 COFFEY, Q.C.:

18 Q. And you can't tell the Commissioner, then,

19 like, just how that day it ended up sealed and

20 it ended up in a locked drawer as opposed to

21 in the mail system?

22 MR. TILLEY:

23 A. At the end of the day I would have secured

24 anything that I would have thought was

25 confidential in a locked drawer.

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1 COFFEY, Q.C.:

2 Q. And it just, the fact that the deputy minister

3 had asked for this on behalf of the

4 department, I take it, just slipped your mind

5 then afterward?

6 MR. TILLEY:

7 A. I can only speak to it in the context of the

8 events that were going on at the time and it

9 was one of those things that was not in the

10 front of my attention and nor do I have any

11 recollection of anybody coming to say we

12 haven't got it yet.

13 COFFEY, Q.C.:

14 Q. Now, these reports, you received them from

15 whom, the copies that you got?

16 MR. TILLEY:

17 A. The reports that I was going to forward?

18 COFFEY, Q.C.:

19 Q. Yes.

20 MR. TILLEY:

21 A. I would have asked them to be forwarded from

22 the vice-president of the medical services

23 office.

24 COFFEY, Q.C.:

25 Q. That would be Oscar Howell at the time?

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1 MR. TILLEY:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. Okay. Just on that point, the actual medical

5 bylaws, have you actually read the medical

6 bylaws?

7 MR. TILLEY:

8 A. I would have.

9 COFFEY, Q.C.:

10 Q. You would have.

11 MR. TILLEY:

12 A. It's been some time since I've seen them.

13 COFFEY, Q.C.:

14 Q. And you didn't consult them, though, in the

15 course of dealing with the ER/PR matter?

16 MR. TILLEY:

17 A. I don't recall specifically referring to them.

18 COFFEY, Q.C.:

19 Q. Okay. Are you aware of, you know, the notion

20 or idea that a peer review, that the person or

21 persons being reviewed under those rules is

22 entitled to a copy of the report, does that

23 make sense to you?

24 MR. TILLEY:

25 A. That would make sense to me.

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1 COFFEY, Q.C.:

2 Q. In other words, if a physician or presumably

3 more than one physician is being reviewed,

4 their work, that he or she would be entitled

5 at some point in time to see the report?

6 MR. TILLEY:

7 A. Um-hm.

8 COFFEY, Q.C.:

9 Q. Concerning their own work?

10 MR. TILLEY:

11 A. Um-hm.

12 COFFEY, Q.C.:

13 Q. That would make sense, wouldn't it?

14 MR. TILLEY:

15 A. That would be reasonable.

16 COFFEY, Q.C.:

17 Q. Do you have any reason to believe that up to

18 the time you left your position that any of

19 the physicians whose work might have been

20 reviewed by Dr. Banerjee, other than perhaps

21 Dr. Cook, who had retained Dr. Banerjee in the

22 first place?

23 MR. TILLEY:

24 A. Um-hm.

25 COFFEY, Q.C.:

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1 Q. Other than Dr. Cook do you have any reason to
 2 believe that any other pathologist actually
 3 was given a copy of the report?
 4 MR. TILLEY:
 5 A. I have no reason to speculate one way or the
 6 other.
 7 COFFEY, Q.C.:
 8 Q. I take it, you were not told that they were?
 9 MR. TILLEY:
 10 A. I don't recall anybody mentioning any of that
 11 to me.
 12 COFFEY, Q.C.:
 13 Q. From the perspective of, if you--for a second
 14 if you put yourself in the position of a
 15 pathologist working within your organization
 16 while beginning in July, August, 2005
 17 continuing until July, 2007 when you left, if
 18 you try to put yourself in a position of one
 19 of those physicians, do you think perhaps
 20 they, one or more of them might have wanted to
 21 actually see what was in the report?
 22 MR. TILLEY:
 23 A. It's certainly possible.
 24 COFFEY, Q.C.:
 25 Q. Do you think even as a courtesy to them that

Page 10

1 it might have been wise to have it made known
 2 to them?
 3 MR. TILLEY:
 4 A. That would be a decision that Dr. Cook would
 5 obviously be left with and there would be a
 6 judgment call on his part.
 7 COFFEY, Q.C.:
 8 Q. Would it be Dr. Cook or would it be Dr.
 9 Williams or Dr. Howell?
 10 MR. TILLEY:
 11 A. Well, Dr. Cook also had a copy of the review,
 12 I understand.
 13 COFFEY, Q.C.:
 14 Q. Yes, but in terms of, like, who was running
 15 this -
 16 MR. TILLEY:
 17 A. Well, certainly between -
 18 COFFEY, Q.C.:
 19 Q. - matter, this is the VP -
 20 MR. TILLEY:
 21 A. - Dr. Cook and the vice-president of medical
 22 services.
 23 COFFEY, Q.C.:
 24 Q. Now, sir, on that point, in terms of keeping
 25 the physicians informed, the people actually

Page 11

1 doing the work of pathology, are you aware of
 2 or did you ever make yourself aware of how
 3 much actually they were being kept informed?
 4 MR. TILLEY:
 5 A. About the results of the review?
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 MR. TILLEY:
 9 A. No, I can't speak to that.
 10 COFFEY, Q.C.:
 11 Q. Did you ever take any steps to insure that
 12 they were being kept informed?
 13 MR. TILLEY:
 14 A. Well, I knew from some reports that there were
 15 discussions going on, but how extensive, I
 16 couldn't say.
 17 COFFEY, Q.C.:
 18 Q. Now, which brings me to a wider and larger or
 19 broader topic. You wrote down, you've told
 20 us, you told the Commissioner, that the
 21 minister of the day used the word "explosive"
 22 to describe this situation early on?
 23 MR. TILLEY:
 24 A. That's correct.
 25 COFFEY, Q.C.:

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1 Q. You said you told him you didn't really
 2 disagree with that?
 3 MR. TILLEY:
 4 A. That's correct.
 5 COFFEY, Q.C.:
 6 Q. You've told us that, I take it this was the
 7 largest clinical matter you've ever had to
 8 deal with?
 9 MR. TILLEY:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. And I'm going to suggest to you very early on
 13 you recognized it as such, you identified it
 14 as such, didn't you?
 15 MR. TILLEY:
 16 A. I did.
 17 COFFEY, Q.C.:
 18 Q. And your role would have been, as a CEO,
 19 because you said you did not micromanage, so
 20 your role as a CEO was to manage the
 21 organization's overall response to it?
 22 MR. TILLEY:
 23 A. That would be more detail than I would have
 24 normally intended to imply. My responsibility
 25 is for the organization as a whole.

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1 COFFEY, Q.C.:

2 Q. Yes.

3 MR. TILLEY:

4 A. The actual follow-up in this would have been

5 lead by the program leadership team in

6 conjunction with the vice-president for

7 medical services.

8 COFFEY, Q.C.:

9 Q. Which is Dr. Williams, the VP; Dr. Cook, the

10 clinical chief; and Terry Gulliver, the

11 program director?

12 MR. TILLEY:

13 A. That would be the prime group.

14 COFFEY, Q.C.:

15 Q. Now, sir, are you able to identify, like,

16 other than those three individuals, who the--

17 well, whether there was ever a team or a group

18 identified to deal with this?

19 MR. TILLEY:

20 A. Well, in addition to those individuals there

21 was a representative from quality.

22 COFFEY, Q.C.:

23 Q. Yes.

24 MR. TILLEY:

25 A. Would have been very -

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1 COFFEY, Q.C.:

2 Q. That would be Ms. Predham?

3 MR. TILLEY:

4 A. Yes. There would have been a participant from

5 communications and that would have been the -

6 COFFEY, Q.C.:

7 Q. Ms. Bonnell?

8 MR. TILLEY:

9 A. Ms. Bonnell, and others in her department in

10 relation to that. Mr. Dyer, who was the

11 manager of the lab would certainly have been

12 involved in it.

13 COFFEY, Q.C.:

14 Q. Did he regularly attend meetings or anything

15 like that?

16 MR. TILLEY:

17 A. Well, not all the meetings that I attended,

18 but being the manager specific to the service,

19 I knew that his name came up from time to

20 time.

21 COFFEY, Q.C.:

22 Q. But in terms of this actual kind of core

23 group, he wasn't part of the core group?

24 MR. TILLEY:

25 A. I can't speak to that per se, but I know he

Page 15

1 was consulted through the process.

2 COFFEY, Q.C.:

3 Q. Okay. Go ahead.

4 MR. TILLEY:

5 A. Dr. Carter, of course, would have been a part

6 of that team doing the review in various

7 stages throughout the process.

8 COFFEY, Q.C.:

9 Q. Now, in that group, correct me if I have a

10 misunderstanding of it, is there anyone there

11 who has any particular expertise in

12 information management?

13 MR. TILLEY:

14 A. No.

15 COFFEY, Q.C.:

16 Q. Can you explain the absence of such a person

17 in a group that was tasked with managing this

18 sort of a circumstance?

19 MR. TILLEY:

20 A. Um-hm. Well, there was certainly a lot of

21 patients being identified. The issue of

22 keeping control of them was not seen to be or

23 not raised as an issue of concern in the early

24 stages until they started to have some

25 problems with the databases and the accuracy

Page 16

1 of databases and so on.

2 COFFEY, Q.C.:

3 Q. I'm going to suggest to you that happened

4 before August 1st.

5 MR. TILLEY:

6 A. Okay. Well, there was -

7 COFFEY, Q.C.:

8 Q. Because you told us yesterday about the--

9 remember when we looked at the document with

10 the cancer registry, double checking with the

11 cancer registry?

12 MR. TILLEY:

13 A. Yes, right, okay.

14 COFFEY, Q.C.:

15 Q. Suggesting that if you had to double check

16 something against another database suggests

17 that perhaps you're uncertain about your

18 primary one. So that was early on.

19 MR. TILLEY:

20 A. Right.

21 COFFEY, Q.C.:

22 Q. Go ahead.

23 MR. TILLEY:

24 A. Well, there was certainly no issue raised in

25 terms of the need to have somebody with an

Page 17

1 information technology background at that
 2 point.
 3 COFFEY, Q.C.:
 4 Q. And I take it it didn't occur to you?
 5 MR. TILLEY:
 6 A. No.
 7 COFFEY, Q.C.:
 8 Q. To raise it. Looking back on it, was that an
 9 oversight?
 10 MR. TILLEY:
 11 A. The number of patients impacted by this and
 12 the demands on the existing folks with regards
 13 to their other duties, as well as this
 14 particular function, was certainly testing
 15 their skills beyond their limits in terms of
 16 database management. And I think that is a
 17 fair observation, that having somebody with
 18 that level of expertise may have added to the
 19 processing here.
 20 COFFEY, Q.C.:
 21 Q. For example, a very basic idea in this
 22 context, there was a decision made early on
 23 that in terms of priority, the tissue samples
 24 of living patients should be tested first?
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. You've told the Commissioner that. And that,
 4 of course, would necessitate identifying the
 5 deceased?
 6 MR. TILLEY:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. Right? Do you know, do you have any idea how
 10 they went about trying to do that?
 11 MR. TILLEY:
 12 A. My recollection on that point is that in the
 13 initial group of blocks they did send off,
 14 there was, in fact, quite a number of deceased
 15 patients' blocks contained in that group. So
 16 they weren't able to have a means that could
 17 reconcile whether that particular test that
 18 had been done several years earlier, that that
 19 particular patient was now deceased.
 20 COFFEY, Q.C.:
 21 Q. Do you know if they were even aware of, the
 22 people involved in this, that there is such a
 23 provincial database, mortality database?
 24 MR. TILLEY:
 25 A. Well, there was reference earlier to the

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1 cancer registry, so that was being referenced.
 2 COFFEY, Q.C.:
 3 Q. Sure. But that, that's not the provincial
 4 mortality database, is it?
 5 MR. TILLEY:
 6 A. I'm sorry, I'm not able to -
 7 COFFEY, Q.C.:
 8 Q. You're not familiar -
 9 MR. TILLEY:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. Okay. We'll hear, the Commissioner will hear
 13 more on that. You knew, I'm going to suggest
 14 to you, fairly early on in this process that
 15 the individuals who were involved on your
 16 behalf or your organization's behalf, as you
 17 put it, were--they had other workloads
 18 otherwise, they were managers in their own
 19 right, all these individuals, weren't they?
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. They already had an existing workload before
 24 this matter came up?
 25 MR. TILLEY:

Page 20

1 A. That's correct.
 2 COFFEY, Q.C.:
 3 Q. You, as their chief manager, realized that
 4 this was being--is an added burden for them,
 5 correct?
 6 MR. TILLEY:
 7 A. That's right.
 8 COFFEY, Q.C.:
 9 Q. And it wasn't a minimal added burden, it was a
 10 significant added burden, wasn't it?
 11 MR. TILLEY:
 12 A. That's correct.
 13 COFFEY, Q.C.:
 14 Q. And did it occur to you fairly early on in
 15 this process that, in fact, this in itself was
 16 almost a full-time job, dealing with this
 17 matter, for the people involved?
 18 MR. TILLEY:
 19 A. Um-hm. There was no doubt that this was
 20 recognized as a major problem even before the
 21 numbers reached the near 1000 mark. At that
 22 point in time we were seconding the people in
 23 quality initiatives department as well in the
 24 laboratory to take this issue on. And they
 25 did spend quite a number of hours outside of

Page 21

1 their normal work commitments to identify the
 2 patients involved. In the case of the lab it
 3 was felt that the complexities associated with
 4 having multiple databases to draw from because
 5 of the early days the Health Care Corporation
 6 were using separate Meditech systems, I
 7 understand, but that necessitated individuals
 8 who had the level of expertise in the lab to
 9 go through literally thousands of reports to
 10 pull that forward. Because I remember having
 11 a conversation as to whether we can get
 12 somebody else to help with that process and
 13 the level of expertise was felt to be limited.
 14 In terms of the -
 15 THE COMMISSIONER:
 16 Q. Sorry, I don't want to interrupt, but I just
 17 need to understand. Are you saying the
 18 problem was the different ways that the data
 19 was recorded and kept? As I understand it,
 20 St. Clare's and the Health Sciences and the
 21 Grace had had different systems.
 22 MR. TILLEY:
 23 A. That's correct.
 24 THE COMMISSIONER:
 25 Q. Which did not meld together?

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1 MR. TILLEY:
 2 A. No.
 3 THE COMMISSIONER:
 4 Q. Was that the problem?
 5 MR. TILLEY:
 6 A. That was part of it.
 7 THE COMMISSIONER:
 8 Q. Or was it what you got when you accessed the
 9 system?
 10 MR. TILLEY:
 11 A. Both, Commissioner. Apparently they had to go
 12 down to thousands of individual patient
 13 information to pull out what was specific to
 14 this issue, so it simply wasn't giving one
 15 computer report from each of the systems. So
 16 there was a fairly significant task here, and
 17 I recollect some discussions about there being
 18 a limited number of people to do that.
 19 THE COMMISSIONER:
 20 Q. Sorry, I don't want to interrupt again, but I
 21 am getting confused. So do I take it then
 22 from the system, the system was not capable --
 23 or the three systems were not capable of going
 24 into someone's record and identifying a sub-
 25 part of the record?

Page 23

1 MR. TILLEY:
 2 A. That's my understanding.
 3 THE COMMISSIONER:
 4 Q. So you had to pull up --
 5 MR. TILLEY:
 6 A. Multiple records and then individually --
 7 THE COMMISSIONER:
 8 Q. And then go through those records?
 9 MR. TILLEY:
 10 A. Go through paper versions or computer
 11 versions. I can't speak to exactly if there
 12 was both available or not, and then identify
 13 those specifically. So that's on the lab
 14 issue. Clearly on the staff in the Quality
 15 Initiatives Department, which comes at a later
 16 date, but there were some times that we were
 17 concerned about the amount of responsibility
 18 that they were taking on, but that was in
 19 terms of the patient contact.
 20 COFFEY, Q.C.:
 21 Q. Well, what did you -- you were aware of this,
 22 of the stress levels, right?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 24

1 Q. As a manager, you're aware of it. I take it,
 2 you're aware, for example, the lab personnel,
 3 they were still having to do their jobs,
 4 anyway?
 5 MR. TILLEY:
 6 A. That's correct.
 7 COFFEY, Q.C.:
 8 Q. Their normal workload, carry their normal
 9 workload. You were aware of this. This was
 10 not for a day or two or five, was it? This
 11 went on for a period of weeks, if not months.
 12 MR. TILLEY:
 13 A. It did.
 14 COFFEY, Q.C.:
 15 Q. What steps, if any, did you take to alleviate
 16 the situation for them?
 17 MR. TILLEY:
 18 A. Well, let me say at the outset, it's not
 19 abnormal for managers in the health care
 20 system to be spending a lot of hours outside
 21 of work. Secondly, the ability to draw upon
 22 individuals who had sufficient understanding
 23 to do this was very limited in the
 24 organization, and --
 25 COFFEY, Q.C.:

Page 25

1 Q. If I could on that, so they're the only ones,
 2 Barry and Terry are the two who can go through
 3 the Meditec System?
 4 MR. TILLEY:
 5 A. Well, that's the ones that were designated and
 6 seen as the prime individuals.
 7 COFFEY, Q.C.:
 8 Q. How about -- what I'm getting at is how about
 9 somebody substituting for them in their normal
 10 work day activities?
 11 MR. TILLEY:
 12 A. I couldn't speak to that.
 13 COFFEY, Q.C.:
 14 Q. So that wasn't addressed by you?
 15 MR. TILLEY:
 16 A. It certainly wasn't addressed by me.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 MR. TILLEY:
 20 A. And my third point, Commissioner, is that --
 21 again I got to keep speaking to the size of
 22 this organization. The fact that Mr. Dyer
 23 reported to Mr. Gulliver, Mr. Gulliver would
 24 have reported to Dr. Williams or Dr. Oscar
 25 Howell, and then eventually to me, those are

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1 individuals that maintain a closer link than I
 2 would with any of those people in the lab
 3 itself. So clearly it's a part of everyone's
 4 responsibility to keep an eye on staff and be
 5 supportive of them, but, in particular, it's
 6 those obviously that see them on a day to day
 7 basis. Now having said that, this
 8 organization has been one that staff have been
 9 very supportive of one another, and I know
 10 many times that there were people calling and
 11 giving their support to the extent that they
 12 were recognizing that these people were being
 13 asked to do a very difficult job.
 14 COFFEY, Q.C.:
 15 Q. If I could, Mr. Tilley, was there one full
 16 time equivalent position added to help with
 17 this matter?
 18 MR. TILLEY:
 19 A. I don't think there was.
 20 COFFEY, Q.C.:
 21 Q. I just pick one because there wasn't even one,
 22 was there?
 23 MR. TILLEY:
 24 A. It was a task that everybody took on, and I
 25 certainly knew the individuals that were

Page 27

1 involved here, I knew their capabilities in
 2 terms of their commitment to the organization,
 3 I knew their willingness to work hours and to
 4 do their best to get this thing resolved.
 5 COFFEY, Q.C.:
 6 Q. But you also then, as a manager of some
 7 experience, would have been aware that the
 8 longer a person is stressed, the more apt they
 9 are to make errors or to miss things?
 10 MR. TILLEY:
 11 A. That's true, very true.
 12 COFFEY, Q.C.:
 13 Q. And as a manager, I take it -- as a chief
 14 manager, it would have been your
 15 responsibility to ensure or to try to ensure
 16 that people were not allowed to -- your
 17 subordinates to put themselves in a situation
 18 where that was going to occur?
 19 MR. TILLEY:
 20 A. Well, there's always stress in health care.
 21 There's now way of avoiding that.
 22 COFFEY, Q.C.:
 23 Q. As the manager, was that your responsibility
 24 to look at your subordinates, the people who
 25 were working very hard on behalf of the

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1 organization, and to take steps to ensure that
 2 they didn't overextend themselves? Is that
 3 your job as a manager?
 4 MR. TILLEY:
 5 A. As a CEO of the Health Care Corporation of St.
 6 John's and Eastern Health, I would certainly
 7 be giving my attention to the Vice Presidents
 8 and Chief Operating Officers. I would clearly
 9 be monitoring their activities to ensure that
 10 it's within reason, and if I felt that they
 11 were exceeding the level to which they could
 12 reasonably cope, then we would look to find
 13 opportunities for reassigning some
 14 responsibility or not, and I would have
 15 expected them to do the same in other parts of
 16 the organization.
 17 COFFEY, Q.C.:
 18 Q. Okay. So you saw your role as ensuring that
 19 Bob Williams and his equivalents didn't
 20 overextend themselves, and even though you
 21 might have recognized that -- had reason to
 22 believe that Bob Williams' immediate
 23 subordinates were perhaps overextending
 24 themselves, that you would not take steps to
 25 intervene, is that what you're saying?

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1 MR. TILLEY:
 2 A. No. I'm saying that the prime group that I'm
 3 responsible for is my direct executive team.
 4 The people that worked surrounding this
 5 project were known to me. I knew their
 6 backgrounds relatively well. There were
 7 occasions when I would have raised the
 8 question as to whether somebody needed
 9 support, and Heather Predham is one that I do
 10 specifically recall, and I know that there
 11 were some arrangements there made to make sure
 12 her workload was modified to reflect that, but
 13 in this process, and it's important for me to
 14 be able to state this, when this issue became
 15 a factor, our intention was to focus in on how
 16 we correct this and how we mitigate, minimize,
 17 eliminate any potential risk to the patient.
 18 So we shut the system down and we started to
 19 retest individuals who may fall into that
 20 category. Then we went forward in terms of
 21 follow up as a way that I very strongly
 22 believe in, we looked forward, we didn't go
 23 back --
 24 COFFEY, Q.C.:
 25 Q. I'm not --

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1 MR. TILLEY:
 2 A. It was a blameless environment.
 3 COFFEY, Q.C.:
 4 Q. Mr. Tilley, I'm not questioning you on that
 5 right now, okay. If I could, I'm asking you
 6 about your own management of this, okay.
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. What you did and didn't do, okay. Was there
 11 any written plan put in place as to how this
 12 was to unfold, how the handling of this matter
 13 would unfold? Was there any written plan?
 14 MR. TILLEY:
 15 A. There were meetings, there was descriptions of
 16 meetings, there was flow charts, but a written
 17 plan that I can hand over to you now that was
 18 available then, no.
 19 COFFEY, Q.C.:
 20 Q. Were there any regularly scheduled meetings?
 21 MR. TILLEY:
 22 A. I only attended those that were pertaining to
 23 information that was important to me. There
 24 were obviously meetings that I didn't attend,
 25 and I don't know if they were regularly

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1 scheduled or not.
 2 COFFEY, Q.C.:
 3 Q. And the ones that you attended, I take it,
 4 were not regularly scheduled?
 5 MR. TILLEY:
 6 A. Well, this was an activity that was moving
 7 very quickly, so at that point in time it was
 8 a question of how quickly could you mobilize a
 9 group, particularly physicians who have
 10 commitments made already.
 11 COFFEY, Q.C.:
 12 Q. So I take it the answer is no, there were no
 13 regularly -- you didn't actually schedule
 14 regular meetings where you be kept --
 15 MR. TILLEY:
 16 A. I certainly did not.
 17 COFFEY, Q.C.:
 18 Q. Okay, and the identification of any required
 19 personnel in order to deal with this issue,
 20 you did not actually -- other than involving
 21 Bob Williams, you didn't get beyond that?
 22 MR. TILLEY:
 23 A. No. In terms of who was going to follow up,
 24 that was at that level.
 25 COFFEY, Q.C.:

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1 Q. Did you ever ask the Department of Health for
 2 any more money or resources to deal with this?
 3 MR. TILLEY:
 4 A. No, I did not.
 5 COFFEY, Q.C.:
 6 Q. Looking back on it, might it have been
 7 something that should have been considered?
 8 First of all, did you ever consider doing it?
 9 MR. TILLEY:
 10 A. Ever consider going to the Department of
 11 Health?
 12 COFFEY, Q.C.:
 13 Q. Yes.
 14 MR. TILLEY:
 15 A. Well, very clear in the game resources were
 16 aligned within the organization to help us
 17 move forward within the lab. I think that's
 18 represented in one of the statements that
 19 we've already looked at. Secondly, if we
 20 needed additional resources to help us move
 21 that, we weren't going to wait to knock on the
 22 Department of Health's door. We were a
 23 billion dollar organization, we managed our
 24 resources efficiently, but this was a very
 25 important issue and if we needed more

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1 resources, we would simply have dedicated them
 2 to it.
 3 COFFEY, Q.C.:
 4 Q. Internally?
 5 MR. TILLEY:
 6 A. Internally.
 7 COFFEY, Q.C.:
 8 Q. So it didn't cross your mind, I take it, to go
 9 to the Department and ask for more personnel
 10 or whatever sort might be necessary --
 11 MR. TILLEY:
 12 A. I didn't see that as an issue, no.
 13 COFFEY, Q.C.:
 14 Q. Or more money. Did Mr. Ottenheimer offer or
 15 ask if this was a financial matter?
 16 MR. TILLEY:
 17 A. He did.
 18 COFFEY, Q.C.:
 19 Q. And you assured him that it wasn't?
 20 MR. TILLEY:
 21 A. That's what I did indicate, we had the
 22 resources lined up internally to do this.
 23 COFFEY, Q.C.:
 24 Q. Of course, that would have been on July 19th
 25 or 21st or so, right?

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1 MR. TILLEY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. It was early on.
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. The scope of the potential endeavour widened
 9 after that, became apparent, didn't it, it was
 10 going to become more and more significant?
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Was it ever -- did you ever re-examine the
 15 issue in your own mind as to, okay, I know I
 16 told the Minister last week or last month no
 17 more money is necessary, but this is bigger
 18 than I thought? Did you ever consider going
 19 back to him?
 20 MR. TILLEY:
 21 A. No, I didn't, because if the need was
 22 identified internally, I had no doubt that we
 23 would provide the money internally even to the
 24 extent that we would have spent money we
 25 didn't have.

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1 COFFEY, Q.C.:
 2 Q. Now in terms of crisis management, do you have
 3 any training in crisis management?
 4 MR. TILLEY:
 5 A. Other than 30 years of it.
 6 COFFEY, Q.C.:
 7 Q. I say experience, but I mean formal?
 8 MR. TILLEY:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. Are you aware of whether or not there is a
 12 body of expertise that exists that does
 13 purport at least to deal with that in a formal
 14 way?
 15 MR. TILLEY:
 16 A. In a very peripheral way. There's
 17 organizations that will offer you pretty much
 18 everything these days.
 19 COFFEY, Q.C.:
 20 Q. Without characterizing this as a crisis, okay,
 21 without doing that, did it ever occur to you
 22 that Eastern Health might want to consider
 23 consulting outside expertise in this regard?
 24 MR. TILLEY:
 25 A. Not at that time.

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1 COFFEY, Q.C.:
 2 Q. Did it ever occur to you?
 3 MR. TILLEY:
 4 A. Well, in the spring of 2007, I did speak to
 5 the Minister. It was at a time when we were
 6 talking about the challenges that we were
 7 having with regard to the numbers, the
 8 database, and I had indicated to him -- I
 9 think the way I described it was, "I wish that
 10 I had a SWAT team that I could bring in that
 11 could work with the staff to give them support
 12 throughout this". The staff that we had
 13 involved, I felt were very competent and very
 14 caring and were the ones that we would want to
 15 be involved in this, but I did indicate to the
 16 Minister, Minister Wiseman, that as I think
 17 about this, looking back two years, that could
 18 potentially have been a benefit.
 19 COFFEY, Q.C.:
 20 Q. So you're telling --
 21 THE COMMISSIONER:
 22 Q. I'm not sure what that -- what kind of
 23 assistance you were thinking of when you talk
 24 about a SWAT team. Obviously, I don't think
 25 you wanted people in masks with equipment and

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1 guns.
 2 MR. TILLEY:
 3 A. No, ma'am.
 4 THE COMMISSIONER:
 5 Q. Walking through your door, but what kind of
 6 support were you thinking might have been of
 7 benefit?
 8 MR. TILLEY:
 9 A. Well, what I was thinking is that someone
 10 could parallel the work of the existing staff
 11 in terms of managing and organizing the
 12 database, someone who could be searching out
 13 there to say, you know, is there a possibility
 14 that there's more information over in that
 15 corner.
 16 COFFEY, Q.C.:
 17 Q. In fact, did you ever inquire internally
 18 within Eastern Health as to whether or not
 19 there was, in fact, such IT expertise
 20 available?
 21 MR. TILLEY:
 22 A. I wouldn't have inquired myself, no.
 23 COFFEY, Q.C.:
 24 Q. Well, even in May of '07 when you were talking
 25 to the Minister about this?

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1 MR. TILLEY:
 2 A. Well, we certainly had a IT Department that
 3 was growing, and it was growing because it was
 4 one of the beliefs that I had actually
 5 emanating perhaps from the HAY Operational
 6 Review, where we saw the need to have more
 7 expertise, more operating capacity,
 8 technology, to be able to increase our
 9 decision making power.
 10 COFFEY, Q.C.:
 11 Q. Did you ever ask the IT people whether that
 12 expertise was actually in-house? Did you ever
 13 make that inquiry?
 14 MR. TILLEY:
 15 A. I can't recall making -- ever making that
 16 inquiry.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 MR. TILLEY:
 20 A. What I have to do is work with the individuals
 21 who are the logical supporters. If they
 22 believe that they need extra support, then
 23 I've got to depend on their response or input
 24 in moving somewhere else for help.
 25 COFFEY, Q.C.:

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1 Q. But the individuals involved in this,
 2 primarily involved in it, to your knowledge
 3 had no particular expertise in information
 4 management?
 5 MR. TILLEY:
 6 A. Well, they had expertise in terms of talking
 7 to patients, they had expertise in terms of
 8 being able to log whether a patient has been
 9 contacted and follow up and so on.
 10 COFFEY, Q.C.:
 11 Q. How about whether a patient had even been
 12 identified to start?
 13 MR. TILLEY:
 14 A. Well that would have been an issue, of course,
 15 that would have gone back to the lab and I had
 16 no indication at that point in time that the
 17 lab had anything other than a complete list
 18 and then follow up on it.
 19 COFFEY, Q.C.:
 20 Q. So, now with respect to the liaison with the
 21 other health authorities about this matter,
 22 whose responsibility, within your
 23 organization, was that?
 24 MR. TILLEY:
 25 A. It would certainly depend on the issue. As I

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1 had indicated or I believe I've indicated,
 2 when this issue first started, the liaison
 3 occurred between Dr. Cook and his colleagues i
 4 the other health authorities. At the
 5 provincial level there is a form whereby the
 6 chief executive officers get together to
 7 discuss issues in common and there is an issue
 8 with respect to or an opportunity for the
 9 vice-presidents of Medical Services to get
 10 together and talk about related issues.
 11 COFFEY, Q.C.:
 12 Q. Now that get together by the CEO's of the
 13 Regional Health Authorities occur what, every
 14 week?
 15 MR. TILLEY:
 16 A. Every week or two.
 17 COFFEY, Q.C.:
 18 Q. Every week or two. And that was after the
 19 authorities came into force on April 1, 2005?
 20 MR. TILLEY:
 21 A. I don't have the specific dates, but I know we
 22 started fairly quickly.
 23 COFFEY, Q.C.:
 24 Q. Early on. Certainly by the time you learned
 25 about the ER/PR issue, those regular

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1 teleconferences existed.
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. When did you first raise this matter with your
 6 counterparts?
 7 MR. TILLEY:
 8 A. My recollection is that there was a board
 9 meeting of the NLHBA, which is the
 10 Newfoundland and Labrador Health Board's
 11 Association where the board chairs and CEO's
 12 there--and that's my first recollection that
 13 we had spoken to it.
 14 COFFEY, Q.C.:
 15 Q. And when was that?
 16 MR. TILLEY:
 17 A. I can't be specific, I'm thinking it might
 18 have been in September.
 19 COFFEY, Q.C.:
 20 Q. September of '05?
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. So during July, beginning, well you knew about
 25 this July 7th, 2005 and I'm going to suggest

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1 to you if you look at your own calendar,
 2 you'll find that beginning that week and many
 3 weeks after, you at least had scheduled and
 4 participated in regular teleconferences with
 5 your counterparts in the other health
 6 authorities throughout the summer, didn't you?
 7 MR. TILLEY:
 8 A. It could have been in the calendar, the
 9 question is did we actually meet. But we did,
 10 that was a recognized forum.
 11 COFFEY, Q.C.:
 12 Q. So all this is going on, you know as a CEO of
 13 Eastern Health that approximately half the
 14 people involved, the patients, are from the
 15 other authorities, you would have been aware
 16 of that fairly early on.
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Yet you did not raise it until September with
 21 the other CEOs, is that -
 22 MR. TILLEY:
 23 A. Well I can't be certain on the September
 24 issue, but I'm thinking it had to be fairly
 25 early in our tenure.

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1 COFFEY, Q.C.:
 2 Q. You certainly remember that Newfoundland and
 3 Labrador health boards--or health authorities
 4 meeting in September, raising it there?
 5 MR. TILLEY:
 6 A. Well I'm thinking it was in September, but
 7 just say early fall. But your point about -
 8 COFFEY, Q.C.:
 9 Q. Well why not bring it up in the phone calls?
 10 MR. TILLEY:
 11 A. Pardon?
 12 COFFEY, Q.C.:
 13 Q. Why not tell them in the phone calls?
 14 MR. TILLEY:
 15 A. Yes, if it's not referenced there, then I can
 16 say that it wasn't spoken to. The likelihood
 17 is that it wasn't spoken to.
 18 COFFEY, Q.C.:
 19 Q. And then why?
 20 MR. TILLEY:
 21 A. I have no recollection as to why. My records
 22 indicate that there was a lot of discussion at
 23 a later point. The dates allude me now, but I
 24 think it was in October.
 25 COFFEY, Q.C.:

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1 Q. Yes, and the records will bear you out on
 2 that, what I'm asking you to tell, if you can
 3 to the Commissioner, explain to the
 4 Commissioner, why you wouldn't have raised it
 5 with your counterparts at an earlier point in
 6 time?
 7 MR. TILLEY:
 8 A. Other than the fact that this was an ongoing
 9 issue internally that the lab director had
 10 contacted his counterparts to get the results
 11 back in, because there was a concern with
 12 regard to the retest. The CEOs were like
 13 myself, they were all newly appointed and
 14 obviously working on restructuring their own
 15 organizations. There certainly wouldn't have
 16 been any reason not to talk about it because
 17 it was going on within their organizations.
 18 COFFEY, Q.C.:
 19 Q. But don't you find it curious looking back on
 20 it that you didn't raise it? This is the most
 21 significant clinical problem you've ever had
 22 to face.
 23 MR. TILLEY:
 24 A. That's true.
 25 COFFEY, Q.C.:

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<p>1 Q. And arguably then for them too.</p> <p>2 MR. TILLEY:</p> <p>3 A. Uh-hm.</p> <p>4 COFFEY, Q.C.:</p> <p>5 Q. And yet you didn't raise it with them.</p> <p>6 MR. TILLEY:</p> <p>7 A. I have to go back and--I haven't seen my notes</p> <p>8 of those meetings to really feel comfortable</p> <p>9 that it had or had not been raised.</p> <p>10 COFFEY, Q.C.:</p> <p>11 Q. Okay. You certainly have no--it doesn't stand</p> <p>12 out in your mind as something that was raised.</p> <p>13 MR. TILLEY:</p> <p>14 A. This issue sort of was a major part of the</p> <p>15 formative years and into the current date for</p> <p>16 Eastern Health. It was always in my mind.</p> <p>17 And I'm just thinking that, you know, it was</p> <p>18 an ongoing discussion wherever I was.</p> <p>19 COFFEY, Q.C.:</p> <p>20 Q. But you didn't send a letter or letters out to</p> <p>21 the other CEOs to say, listen, this is the</p> <p>22 problem, we're on it, we'll keep you apprised?</p> <p>23 You didn't do that in July or August.</p> <p>24 MR. TILLEY:</p> <p>25 A. I didn't. My recollection is that letters</p>	<p>1 meeting that I was involved in with the other</p> <p>2 chief executive officers, along with the vice-</p> <p>3 presidents.</p> <p>4 COFFEY, Q.C.:</p> <p>5 Q. That's in the fall of '05.</p> <p>6 MR. TILLEY:</p> <p>7 A. Yes.</p> <p>8 COFFEY, Q.C.:</p> <p>9 Q. But not like earlier on, in the summer of '05.</p> <p>10 MR. TILLEY:</p> <p>11 A. I don't have anything that comes to that level</p> <p>12 of explanation.</p> <p>13 COFFEY, Q.C.:</p> <p>14 Q. Like, for example, to inform them that this is</p> <p>15 all going on, that we, Eastern Health, have</p> <p>16 decided, finally by the middle of August,</p> <p>17 certainly, of '05, that we are not going to</p> <p>18 contact individual patients to let them know</p> <p>19 this, that the retesting is going on, that was</p> <p>20 a decision you made, right?</p> <p>21 MR. TILLEY:</p> <p>22 A. Sir, what time of the year?</p> <p>23 COFFEY, Q.C.:</p> <p>24 Q. August 15th, '05.</p> <p>25 MR. TILLEY:</p>
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<p>1 were sent from the lab to the directors.</p> <p>2 COFFEY, Q.C.:</p> <p>3 Q. Actually, I think we'll find one letter was</p> <p>4 sent June 14th, 2005 looking for the 2002</p> <p>5 samples and another one in September of '05.</p> <p>6 So, but certainly as a CEO of Eastern Health,</p> <p>7 you don't have any record that you can recall,</p> <p>8 unless it's logged somewhere in a phone log or</p> <p>9 a note of a meeting of a teleconference,</p> <p>10 there's certainly no formal letter out to the</p> <p>11 other authorities?</p> <p>12 MR. TILLEY:</p> <p>13 A. There's no letter and it would either have</p> <p>14 been a conference call or a face-to-face</p> <p>15 meeting with that group.</p> <p>16 COFFEY, Q.C.:</p> <p>17 Q. And in terms of managing a matter of this</p> <p>18 size, do you think it would be important to</p> <p>19 have kind of some written record of the fact</p> <p>20 that I have, my office has notified my</p> <p>21 counterparts elsewhere?</p> <p>22 MR. TILLEY:</p> <p>23 A. Well, I guess you live and die on your notes.</p> <p>24 My notes speak about the meeting and the</p> <p>25 amount of detail that was provided in the</p>	<p>1 A. Uh-hm.</p> <p>2 COFFEY, Q.C.:</p> <p>3 Q. That was certainly, by the end of that</p> <p>4 meeting, the idea of going and telling the</p> <p>5 patients individually had ended.</p> <p>6 MR. TILLEY:</p> <p>7 A. Right. That was the meeting with the</p> <p>8 minister, was it?</p> <p>9 COFFEY, Q.C.:</p> <p>10 Q. Yes.</p> <p>11 MR. TILLEY:</p> <p>12 A. Yes, okay.</p> <p>13 COFFEY, Q.C.:</p> <p>14 Q. So by that point in time, you did not see fit</p> <p>15 to inform the other authorities of that, in</p> <p>16 relation to the fact that you were making a</p> <p>17 decision that affected their patients?</p> <p>18 MR. TILLEY:</p> <p>19 A. Uh-hm. Well, what we were looking for from</p> <p>20 the other authorities, of course, was their,</p> <p>21 the blocks to be sent back into St. John's.</p> <p>22 COFFEY, Q.C.:</p> <p>23 Q. But you didn't tell them that you had made</p> <p>24 this decision?</p> <p>25 MR. TILLEY:</p>

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1 A. I have nothing that indicates that I had that
 2 conversation.
 3 COFFEY, Q.C.:
 4 Q. Did you ever seek any of their input into that
 5 decision or input from it?
 6 MR. TILLEY:
 7 A. I can't say.
 8 COFFEY, Q.C.:
 9 Q. I take it you did recognize that approximately
 10 fifty percent of the patients were their
 11 patients, they weren't yours.
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. You understood that.
 16 MR. TILLEY:
 17 A. Yes, I did.
 18 COFFEY, Q.C.:
 19 Q. And yet, as best you know, you can't recall
 20 anyway any step being taken to ask for their
 21 input into this issue?
 22 MR. TILLEY:
 23 A. That's correct.
 24 COFFEY, Q.C.:
 25 Q. In relation to this issue. Looking back on it

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1 now, do you think that was wise not to have at
 2 least asked what they thought?
 3 MR. TILLEY:
 4 A. I think there was always room to be consulting
 5 on a wide scale. At the time I think the
 6 people that were leading this were very active
 7 in terms of the follow up. They seemed to be
 8 finding information from multiple areas on a
 9 daily basis. The other Regional Health
 10 Authorities are an important group. The labs
 11 were connecting with one another, I couldn't
 12 tell you what telephone conversations were
 13 going on at that level, all I can speak to is
 14 in terms of my contact, what I have records
 15 for and what I don't have records for.
 16 COFFEY, Q.C.:
 17 Q. And you did not seek, you have no record I'm
 18 going to suggest to you, that during the
 19 summer of 2005, that the input from the other
 20 health authorities was sought, certainly not
 21 by yourself and you didn't direct anybody
 22 working for you to go and get it.
 23 MR. TILLEY:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. Okay. And you can't tell the Commissioner if
 2 there was any particular reason why that
 3 wasn't so, why that didn't happen? It was an
 4 oversight because it was either an oversight
 5 or a conscious decision.
 6 MR. TILLEY:
 7 A. Yeah, well it wasn't a conscious decision.
 8 COFFEY, Q.C.:
 9 Q. Now you've spoken of stakeholders. I take it
 10 that the Canadian Cancer Society, in this
 11 context would fall into that category.
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Was any thought, at least to your knowledge,
 16 given during the summer of 2005 to contacting
 17 them and getting their input onto the issue of
 18 communication to the patients?
 19 MR. TILLEY:
 20 A. Right, well I can't remember exactly when it
 21 occurred, but it was recognized as an oversight
 22 and Mr. Dawe, who is the executive director of
 23 that organization, I recall having exchanged
 24 an e-mail or two or might have been a
 25 telephone conversation or two with me. I have

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1 a long-standing relationship with Mr. Dawe in
 2 terms of other capacities, so I knew him
 3 fairly well. And there was a decision at a
 4 point where we felt it was beneficial if in
 5 fact we could maintain some dialogue with him
 6 and I know that Dr. Williams had made some
 7 provision for meeting with Mr. Dawe, but I'm
 8 not sure how frequent that occurred.
 9 COFFEY, Q.C.:
 10 Q. Now this communication with Mr. Dawe about
 11 this ER/PR matter, did that occur before or
 12 after October 2nd, 2005?
 13 MR. TILLEY:
 14 A. I don't recall.
 15 COFFEY, Q.C.:
 16 Q. Is there a record of it? You say there's an
 17 actual e-mail or e-mails.
 18 MR. TILLEY:
 19 A. Well there's certainly an e-mail that Mr. Dawe
 20 and I would have shared.
 21 COFFEY, Q.C.:
 22 Q. And I suggest to you was quite some time after
 23 it went public.
 24 MR. TILLEY:
 25 A. Okay. Well if that's the case, then it's more

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1 likely that that issue became an important one
 2 at that stage.
 3 COFFEY, Q.C.:
 4 Q. So in terms of dealing with the issue of
 5 whether or not patients should be communicated
 6 with, individually about this, in the summer
 7 of 2005, I take it that you had no
 8 recollection of contacting Mr. Dawe or anyone
 9 else from the Canadian Cancer Society about
 10 this?
 11 MR. TILLEY:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. I take it it didn't cross your mind to?
 15 MR. TILLEY:
 16 A. I think that the issue, obviously he would
 17 have a very great interest in that process,
 18 knowing that he was going to be speaking to
 19 that issue as it became more public.
 20 COFFEY, Q.C.:
 21 Q. Well as it became public at all, I take it.
 22 MR. TILLEY:
 23 A. And it would have been, however, the issue of
 24 disclosure to patients was one that certainly
 25 was on the forefront of everybody's mind

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1 within the organization at that time. But,
 2 you know, to say external groups, such as the
 3 Canadian Cancer Society, I don't ever recall
 4 that being raised as an issue.
 5 THE COMMISSIONER:
 6 Q. Sorry, Mr. Coffey, but I'm not sure I
 7 understood the response. Are you saying maybe
 8 it was a good idea but nobody thought about
 9 it; are you saying we thought about it and
 10 decided for our own reasons that it was not
 11 the right time; did you have concerns about
 12 discussing this with the Canadian Cancer
 13 Society? I'm not sure I understood what the
 14 message is in your response.
 15 MR. TILLEY:
 16 A. Thanks for asking. It really didn't come up
 17 as an issue in terms of how we should be
 18 making contact with patients to talk to the
 19 Cancer Society. If it had, I'm not sure that
 20 it would have been seen as a part of the
 21 process to do it that way, that that was a
 22 decision that was more appropriate for those
 23 responsible in the care process. What we
 24 involved the Canadian Cancer Society with or
 25 for in the end, was to ensure that there was

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1 ongoing dialogue about what we were taking
 2 about within the organization, so that at
 3 least he would have the benefit of having some
 4 greater perspective on the activity that was
 5 going on.
 6 THE COMMISSIONER:
 7 Q. So just to make sure I understand your answer,
 8 it is one where you really didn't think about
 9 using the Canadian Cancer Society on the--when
 10 we were talking about disclosure. If we had
 11 done so, we would have thought it's better to
 12 talk to those in our own organization who are
 13 giving care to patients, then it is to the
 14 Canadian Cancer Society; and three, when it
 15 came to the point where it had become public
 16 and you were trying to explain to people what
 17 you were doing, you felt the Canadian Cancer
 18 Society had a role then?
 19 MR. TILLEY:
 20 A. Well that we had a responsibility or an
 21 opportunity to share more information with
 22 them on a go-forward basis. I think you
 23 described it quite well.
 24 THE COMMISSIONER:
 25 Q. Okay. Mr. Coffey?

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1 COFFEY, Q.C.:
 2 Q. Thank you, Commissioner. Registrar, P-0137
 3 please? Now Mr. Tilley, this is an e-mail
 4 dated Monday, July 25, 2005 at 3:38 p.m. or
 5 actually that's the response. The actual
 6 substantive e-mail below it is same date,
 7 11:44 a.m. from yourself to John Abbott. Now
 8 this is the Monday following the Thursday
 9 meeting you had with Mr. Ottenheimer. Sir, I
 10 take it here you're reporting to Mr. Abbott
 11 about--kind of giving him an update after the
 12 weekend.
 13 MR. TILLEY:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. Because you describe having had a meeting
 17 Sunday morning with those involved including
 18 an oncologist and a surgeon. "We are clearly
 19 not at a point yet where we can be confident
 20 that we have a problem and, if so, the extent
 21 of it. The physicians are feeling a little
 22 more comfortable based on the recent
 23 information provided, but more is needed to
 24 get to the bottom of this".
 25 MR. TILLEY:

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1 A. I'm sorry, Mr. Coffey, I can't find the point-
 2 -which point -
 3 COFFEY, Q.C.:
 4 Q. Right here -
 5 MR. TILLEY:
 6 A. I'm sorry -
 7 COFFEY, Q.C.:
 8 Q. Well, first of all this is the e-mail, see the
 9 cursor there?
 10 MR. TILLEY:
 11 A. Yes, yes.
 12 COFFEY, Q.C.:
 13 Q. That's your e-mail.
 14 MR. TILLEY:
 15 A. I'm just trying to find the words as you were
 16 saying them, but I missed.
 17 COFFEY, Q.C.:
 18 Q. You start, "John" -
 19 MR. TILLEY:
 20 A. Okay, I got you now, "the physicians are
 21 feeling a little more comfortable" is down
 22 below -
 23 COFFEY, Q.C.:
 24 Q. I'm sorry--"had a meeting Sunday morning of
 25 those involved", so that would be you had a

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1 meeting -
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. - the day before presumably. And you've
 6 indicated to Mr. Abbott that we are "clearly
 7 not at a point yet where we can be confident
 8 that we have a problem and if so, the extent
 9 of it". Now, that kind of somehow suggests
 10 that, leaving aside the extent of it issue,
 11 that you're--you were what, having misgivings
 12 about whether you had a problem at all at that
 13 point?
 14 MR. TILLEY:
 15 A. Well, I think around the time the issue of
 16 Ventana was being raised and the possibility
 17 that the Ventana system was overcalling the
 18 results.
 19 COFFEY, Q.C.:
 20 Q. So, that's probably what this -
 21 MR. TILLEY:
 22 A. That's the only thing that I can connect with
 23 that point.
 24 COFFEY, Q.C.:
 25 Q. Now, the oncologist and the surgeon, who were

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1 they, do you know?
 2 MR. TILLEY:
 3 A. I have notes of that meeting. If there's a
 4 way of pulling it up, I can -
 5 COFFEY, Q.C.:
 6 Q. Okay, well I'll bring those up then, seeing
 7 that off the top of your head you can't
 8 remember.
 9 MR. TILLEY:
 10 A. Well, I'm thinking it's Doctor Laing, likely,
 11 and I seem to remember Dr. Kwan.
 12 COFFEY, Q.C.:
 13 Q. Kwan, yes. And here though, at the top of the
 14 page, and why I've referred you to it now is
 15 that Mr. Abbott responded to you the same day
 16 at 3:38 p.m. saying "thanks for this. Also, I
 17 e-mailed Bob Williams earlier today to let him
 18 know that Rob Ritter would be in contact with
 19 him for a briefing. Signed, John Abbott".
 20 So, what is--this, I take it, suggests that
 21 Mr. Ritter, who is executive director of the
 22 Newfoundland and Labrador Medical Association?
 23 -
 24 MR. TILLEY:
 25 A. That's correct.

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1 COFFEY, Q.C.:
 2 Q. He was going to get a briefing, apparently.
 3 Now, were you involved in the decision to give
 4 him a briefing?
 5 MR. TILLEY:
 6 A. No.
 7 COFFEY, Q.C.:
 8 Q. So, this was made, presumably, at John
 9 Abbott's, somewhere in the Confederation
 10 Building?
 11 MR. TILLEY:
 12 A. Yes, I would assume.
 13 COFFEY, Q.C.:
 14 Q. Do you have any knowledge, first of all, as to
 15 how that came about?
 16 MR. TILLEY:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. Do you know whether or not the briefing
 20 occurred?
 21 MR. TILLEY:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. Did you ever deal with or meet with Mr. Ritter
 25 about this?

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1 MR. TILLEY:
 2 A. I don't recall having a conversation with Mr.
 3 Ritter on ER/PR though at a later date, I do
 4 recall having a conversation with Mr. Ritter
 5 about recruitment and pertained to
 6 oncologists, I think was the issue at the
 7 time. I think that's much later.
 8 COFFEY, Q.C.:
 9 Q. Okay. So, if there was a meeting or dealings
 10 with Mr. Ritter from the NLMA organization
 11 itself concerning ER/PR, it wasn't with you?
 12 MR. TILLEY:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. And you're not aware of any such dealings?
 16 MR. TILLEY:
 17 A. That I--I'm sorry -
 18 COFFEY, Q.C.:
 19 Q. That Bob Williams told you -
 20 MR. TILLEY:
 21 A. No, I'm not, I'm sorry.
 22 COFFEY, Q.C.:
 23 Q. Okay, that's fine. Do you know if anyone from
 24 the technologist organization, NAPE, got a
 25 briefing or was offered a briefing?

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1 MR. TILLEY:
 2 A. I'm not aware of that.
 3 COFFEY, Q.C.:
 4 Q. You're not aware that anyone was?
 5 MR. TILLEY:
 6 A. In terms of the external -
 7 COFFEY, Q.C.:
 8 Q. Yes.
 9 MR. TILLEY:
 10 A. No, I'm not. Other than--Mr. Dawe is the only
 11 one that comes to mind.
 12 COFFEY, Q.C.:
 13 Q. Well, this reference that you're being advised
 14 that the deputy minister -
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. - is saying that Rob Ritter will be in contact
 19 with him for a briefing. Now, in terms of
 20 this, what authority, from your perspective,
 21 did John Abbott have to tell your VP that he
 22 was to brief Rob Ritter about this issue?
 23 MR. TILLEY:
 24 A. Technically, no direct authority, but clearly
 25 the system had evolved to a point where there

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1 was a lot of communications going on at a lot
 2 of levels. So, I guess Mr. Abbott took it
 3 upon himself to ask Dr. Williams to do a
 4 briefing. And if Dr. Williams did not have any
 5 difficulty with that, he proceeded.
 6 COFFEY, Q.C.:
 7 Q. And you have no memory of what, if anything,
 8 was said. You weren't briefing on what Dr.
 9 Williams was telling Mr. Ritter or may have
 10 told him?
 11 MR. TILLEY:
 12 A. No, I have no recollection about that.
 13 THE COMMISSIONER:
 14 Q. Mr. Coffey, can we go down this road a bit
 15 because it interests me. That is the business
 16 of the relationship between you as CEO and
 17 your board and the Department of Health and
 18 Community Services, who we have a tendency to
 19 shorten to Health. I've heard from a number
 20 of ministers and I've heard from the Chairman
 21 of the Board of Trustees about their view of
 22 this organization and I'd like to know what
 23 the perspective of the CEO is in terms of the
 24 function of your board and what your
 25 relationship is with the minister and what

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1 authority, if any, the minister has in respect
 2 of the operations of Eastern Health?
 3 MR. TILLEY:
 4 A. Okay. Madam Commissioner, it's a complex
 5 issue. In theory or on paper, the flow is
 6 expected to be that the CEO would report to
 7 the board. The board, through the board chair
 8 would report to the minister. And I think for
 9 most things that's the way it worked. That's
 10 why you may have heard me say it would be
 11 inappropriate or I would have not made direct
 12 contact with the minister unless the minister
 13 had made an inquiry of me personally or I was
 14 asked to write the minister. So, that's just
 15 not the way it works. And this meeting that
 16 almost happened with lunch with Mr.
 17 Ottenheimer and I was an event that I was sort
 18 of unexpecting, but thought was a very sincere
 19 gesture. It just hadn't happened.
 20 Now, having said that, I also mentioned
 21 that my employment contract is signed off by
 22 two individuals; one the minister of health
 23 and the other, the board chair. And I also
 24 eluded to the fact yesterday that when I was
 25 appointed to the position as the Chief

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1 Executive Officer of Health Care Corporation,
 2 I was on the phone with the minister of the
 3 day, in terms of they were offering me, you
 4 know, a two-year contract or a three-year
 5 contract. So, from my benefit, it was
 6 clearly, I was expected to be mindful of both
 7 part. Within the organization there was a lot
 8 of interaction. Newfoundland is very small in
 9 comparison to--the Newfoundland health system
 10 is very small in comparison to places like
 11 Ontario. And that's seen as a major, major
 12 advantage. And other large provinces are
 13 envied in particular when they would hear that
 14 I'd be able to call and get the deputy
 15 minister on the phone within a relatively
 16 short period time, where they might have to
 17 wait weeks to get that access.

18 But it did speak to the level of
 19 comradery that had grown over the years by
 20 design or maybe just by the fact that the
 21 individuals involved and their willingness to
 22 know people and ask. So, it wasn't uncommon
 23 for that type of thing to happen. Nor was it
 24 something that I took issue with, if in fact
 25 it was with my executive team. I would have

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1 been a bit concerned if the deputy minister
 2 was starting to write my directors. I'm not
 3 just speaking about the deputy minister, but
 4 because of the size of this organization, it
 5 had gotten--it appeared to have reached a
 6 custom where different levels of health and
 7 different levels of Eastern Health were
 8 talking to one another.

9 Now, at a later point in time towards the
 10 end of my career with Eastern Health, I had
 11 sent a note, my assistant had sent a note to
 12 the organization saying to people, I would
 13 want to receive copies of correspondence that
 14 has gone between Eastern Health and Department
 15 of Health on this issue of ER/PR because I had
 16 walked away from government realizing that
 17 there were things in there that had emanated
 18 from Eastern Health that I had never seen.
 19 But yet, I was going in and obviously being
 20 expected to speak to them. Now, as it turned
 21 out, my career ended before I really had an
 22 opportunity to, sort of, look at that issue.
 23 But it sort of speaks to the fact that
 24 communications are ongoing.

25 THE COMMISSIONER:

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1 Q. Well, from a brief exposure to your world that
 2 I have thus far had, I'm sure that by the end
 3 of the day, I'll probably get greater exposure
 4 to your world than I really ever wanted, but
 5 from the brief exposure I've had before, it
 6 seems to me that there's much more contact with
 7 the Department of Health than there is with
 8 your board of directors.

9 MR. TILLEY:
 10 A. That's true.

11 THE COMMISSIONER:
 12 Q. And from where I'm sitting, I'm saying, well,
 13 how do they fit in. It's certainly not a
 14 traditional board of directors role. How, in
 15 your view, do they fit into the reality of the
 16 scheme that you're dealing with?

17 MR. TILLEY:
 18 A. That's a question I thought of many times.

19 THE COMMISSIONER:
 20 Q. What's your view of it?

21 MR. TILLEY:
 22 A. Well, I have benefitted significantly from the
 23 expertise that sat around my board table.
 24 They brought perspectives that helped shape my
 25 thinking. And I used to describe them as,

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1 it's great to have 18 advisors that could, you
 2 know, dealing with complex issues. But for
 3 the most part, we went to the board, we looked
 4 at bigger issues. We looked at the strategic
 5 direction. We looked at financial issues. We
 6 were monitoring quality. There were -

7 THE COMMISSIONER:
 8 Q. When you say "monitoring quality" what does
 9 that mean?

10 MR. TILLEY:
 11 A. Well, back in the early '80s when quality
 12 assurance was becoming a significant factor
 13 for health care in this country, the
 14 accreditation body starts to raise this issue
 15 of quality assurance.

16 THE COMMISSIONER:
 17 Q. Uh-hm.

18 MR. TILLEY:
 19 A. And in that point in time you're starting to
 20 see organizations identify a person, maybe not
 21 full time, but maybe off the corner of their
 22 desk, taking on the responsibility of helping
 23 individual departments like psychology, or
 24 maybe the plant maintenance department, start
 25 to put together policy manuals which would

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1 help them monitor the quality of the service
 2 that they're providing. So they'd look at it
 3 from an efficiency perspective, they'd look at
 4 it from outcomes in terms of the expectations.
 5 So that process grew. When the Health Care
 6 Corporation became an entity, we actually
 7 formed a Quality Initiatives Department, so we
 8 took it off the corner of the desk that each
 9 of the hospitals had in St. John's before
 10 that.

11 THE COMMISSIONER:
 12 Q. But why does that -- when Mrs. Dawe was here,
 13 I think she saw the Board's role as a policy
 14 role, they didn't get involved in operations.
 15 There were certainly areas where my impression
 16 from her evidence was that she saw them as a
 17 link with a community, a group that could
 18 assess need while you were people were off
 19 busy dealing with the day-to-day running of
 20 the operations, developed policies on a broad
 21 scale and then sort convince the government to
 22 finance them, if they weren't already
 23 financed.

24 MR. TILLEY:
 25 A. Right.

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1 THE COMMISSIONER:
 2 Q. And then sort of say to you, well, here's the
 3 idea, run with it.

4 MR. TILLEY:
 5 A. Right.

6 THE COMMISSIONER:
 7 Q. And it was your job to run with it. So, is
 8 that your perception of it?

9 MR. TILLEY:
 10 A. Well, nothing is as clear as I'd like it to
 11 be, but I can say that Mrs. Dawe came in with
 12 a perspective that she wanted the board to be
 13 more community linked. She did want the board
 14 to make sure that it stayed in the policy
 15 areas because the issues in this organization
 16 were going to be so immense that the board
 17 couldn't risk getting down in the trenches.

18 THE COMMISSIONER:
 19 Q. Okay.

20 MR. TILLEY:
 21 A. Also of major concern to her at the time was
 22 the that not only now were we dealing with St.
 23 John's and the tertiary care responsibilities
 24 or at least in my previous role, but we were
 25 looking at other regions of the province. So,

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1 what she was trying to do was ensure that
 2 different parts of the province--the
 3 individuals that happened to be living in
 4 those particular regions came in with that hat
 5 off, but eastern hats on.

6 THE COMMISSIONER:
 7 Q. Okay.

8 MR. TILLEY:
 9 A. Now, so you know, from that perspective, it's
 10 relatively clear, but in reality we had sub-
 11 committees of the board. There was a finance
 12 committee because that was seen as something
 13 that was important and a reflection of the
 14 issues that health had been dealing with in
 15 the past. So, they wanted a board to oversee
 16 that to see where our spending patterns or
 17 what they were and what we were dealing to
 18 rectify it.

19 THE COMMISSIONER:
 20 Q. So, did you see that as going into operations
 21 or was that still policy?

22 MR. TILLEY:
 23 A. Well, there were some policy, but there's also
 24 some operational issues there.

25 THE COMMISSIONER:

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1 Q. All right.

2 MR. TILLEY:
 3 A. Then the next committee we got into was
 4 planning. Now, that's a very policy oriented
 5 issue because you're saying, what's your major
 6 appliance (phonetic). And then you're
 7 ensuring consultation with the outside world.
 8 You're looking at your inside demands and
 9 you're trying to match up what changes and
 10 shifts.

11 THE COMMISSIONER:
 12 Q. Okay.

13 MR. TILLEY:
 14 A. The one that came on--sorry, did you -

15 THE COMMISSIONER:
 16 Q. No, no, go ahead.

17 MR. TILLEY:
 18 A. The one that came on last speaks to the issue
 19 that we were talking about earlier. And
 20 that's related to quality.

21 THE COMMISSIONER:
 22 Q. Okay.

23 MR. TILLEY:
 24 A. Mrs. Dawe felt initially that there was a need
 25 for the two committees that I just spoke to.

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1 And there was a discussion between her and I
 2 that the accreditation bodies have an
 3 expectation that the board is involved in the
 4 quality process.
 5 THE COMMISSIONER:
 6 Q. Okay. So, is that hands on?
 7 MR. TILLEY:
 8 A. Well, -
 9 THE COMMISSIONER:
 10 Q. Is that in operations?
 11 MR. TILLEY:
 12 A. Well, yes and no. I mean, you're setting
 13 policy with respect to you want to ensure that
 14 patients are given responsible access to care.
 15 So, you monitor that and you find out that the
 16 cardiac patients are now waiting four months
 17 where the national benchmark is two. Then
 18 they might get into a discussion about, well
 19 why is the difference and what's going to
 20 happen to make it different.
 21 THE COMMISSIONER:
 22 Q. Okay. Now, when the ministers were here, my
 23 impression, once again, from their perspective
 24 was that they did not get into operations.
 25 That they were policy people. Is that your

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1 perspective?
 2 MR. TILLEY:
 3 A. Not as clean as that, Commissioner.
 4 THE COMMISSIONER:
 5 Q. Okay. Would you agree that the issue of
 6 coming back full circle to ER/PR, it was
 7 essentially an operational question?
 8 MR. TILLEY:
 9 A. It was primarily an operational question, but
 10 I had no difficulty and, in fact, sought out
 11 the input of my colleagues in the department
 12 with this issue.
 13 THE COMMISSIONER:
 14 Q. Okay. So, what made ER/PR an issue which you
 15 took to the Department of Health and you took
 16 to your board? Both of whom are saying, we
 17 don't get involved in operational issues.
 18 MR. TILLEY:
 19 A. Well, neither one of them should be blind
 20 sided by an issue of this nature. Each one of
 21 them would want ensure that it's being acted
 22 upon and not ignored. So, predominantly, it
 23 was to give them a briefing and to hear any
 24 advice that they may have. The department and
 25 their ability or interest to get involved on

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1 issues usually focuses mostly, in the past, on
 2 how resources are to be allocated. We would
 3 submit a budget. We would have been asked to
 4 identify what the issues are and they would
 5 come back and say, well, we're going to choose
 6 number one, seven, twelve and fourteen. So,
 7 you know, they do get into the organization
 8 from that perspective and make some decisions
 9 that you'd like to say, well, that's what
 10 we're here for. But for their own reasons,
 11 they have those inputs. There's times that
 12 they may decide to say, because there's a
 13 patient out there that's looking for a drug
 14 that's not on the drug formulary and
 15 therefore, publicly financed and we'll get a
 16 direction to say, you know, we're going to
 17 make a change for that individual.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 MR. TILLEY:
 21 A. Or we want a particular individual placed over
 22 there. So, you know, it varies depending on
 23 the issue.
 24 THE COMMISSIONER:
 25 Q. Okay. Now, what about your role in all of

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1 this. Are you a policy person? Are you half
 2 policy/half operations? How do you see your
 3 role with that organization?
 4 MR. TILLEY:
 5 A. I was trying to get into the policy side, but
 6 when you're building a new organization, it is
 7 very difficult to stay in the policy side.
 8 The vice presidents and chief operating
 9 officers were put in place to be my eyes and
 10 ears for the organization. But when you're
 11 building the train while the train is moving,
 12 they're coming to you quite frequently to look
 13 for input.
 14 THE COMMISSIONER:
 15 Q. All right. Leaving aside for the moment the
 16 fact that you were trying to manage in the
 17 midst of this process of putting together all
 18 these organizations, at the end of the day,
 19 the organization which you foresaw being
 20 operating, say you know, five years down the
 21 road, who would be the operations managers?
 22 Would that be the VPs or -
 23 MR. TILLEY:
 24 A. Yes.
 25 THE COMMISSIONER:

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1 Q. - would it be someone below them?
 2 MR. TILLEY:
 3 A. Well, again, a very large organization. Some
 4 of the directors that reported to the vice
 5 presidents, from a budget perspective,
 6 resembled what other health authorities
 7 outside the city may have been managing in
 8 total. So, there's no doubt that the
 9 directors in this organization, in Eastern
 10 Health, were responsible, in some cases, for
 11 tens of millions of dollars. And they would
 12 have certainly have been the people on the
 13 ground. Many of the chief operating officers,
 14 the vice presidents were CEOs in the previous
 15 days. And I suspect most of them took that
 16 mindset and continued to work in their areas
 17 of responsibility where they saw themselves at
 18 a very high level. So, we were clearly an
 19 organization that was trying to transcend
 20 itself to a new way of thinking. And in fact,
 21 we had to, for my benefit, if I was going to
 22 keep getting pulled down all the time then,
 23 first of all, it wasn't going to do justice to
 24 the people that were there to make those
 25 decisions. And secondly there was a whole

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1 bunch of responsibilities that I had in terms
 2 of looking outside the organization that
 3 wasn't being addressed.
 4 THE COMMISSIONER:
 5 Q. Okay, so that's the theory. Now, I think if
 6 anybody agrees on anything in this whole
 7 process, is this was huge; it was a big
 8 problem. And even if you had your ideal
 9 operation five years down the road when you've
 10 melded this institution, would that still be a
 11 problem so big that the CEO would be involved
 12 in?
 13 MR. TILLEY:
 14 A. I can't imagine not being brought into this.
 15 I have talked to some of my colleagues across
 16 the country and they felt that they would not
 17 maybe have been as involved in this if this
 18 was in their organization, but I felt that
 19 where the organization was under change--at
 20 this same time, Madam Commissioner, part of
 21 the rebuilding was making decisions about what
 22 jobs we were going to have. So, most of the
 23 managers, if not all of them, but certainly
 24 most of them had to reapply for their
 25 positions. There were less positions or there

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1 were some individuals who didn't make it into
 2 the new environment.
 3 THE COMMISSIONER:
 4 Q. Yes, but let's go back to ER/PR. What I'm
 5 trying to get is how conceptually you would
 6 have viewed ER/PR dealing with ideally? And
 7 how it was, in fact, dealt with which is what
 8 I've interrupted Mr. Coffey in the middle of
 9 trying to figure out how, in fact, it was
 10 dealt with with my little sojourn off to the
 11 side here today. But what I'm trying to see
 12 is how, in your view of your organization,
 13 ER/PR as a problem should have been dealt
 14 with? Sort of, what elements of the
 15 organization should have come in and pounced
 16 on that problem. And as I see it, you're
 17 saying, it's elements below your position.
 18 MR. TILLEY:
 19 A. Yes.
 20 THE COMMISSIONER:
 21 Q. And what are they?
 22 MR. TILLEY:
 23 A. Well, first of all, there's no "how to"
 24 manual. And I haven't been able to find
 25 anybody yet whose anywhere near this to deal

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1 with. So, we were clearly on new ground. And
 2 this was, you know, building as we go.
 3 There's no doubt that this had to have a team
 4 pulled together.
 5 THE COMMISSIONER:
 6 Q. Uh-hm.
 7 MR. TILLEY:
 8 A. The team had to be lab and both the technology
 9 and the professional pathologist side in the
 10 lab.
 11 THE COMMISSIONER:
 12 Q. Uh-hm.
 13 MR. TILLEY:
 14 A. You had to have the direct care providers, the
 15 oncologists and the surgeons. You had to have
 16 somebody from quality. They're there in a
 17 combination of roles, like from a co-
 18 ordination role, from just doing some of the
 19 stuff (phonetic) information or stunt work--
 20 I'm sorry to use that word, but you know, the
 21 small stuff. You needed to have somebody--Mr.
 22 Coffey eluded to--on the data base side. And
 23 this is looking back -
 24 THE COMMISSIONER:
 25 Q. And whose job was it to pull together that -

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1 MR. TILLEY:
 2 A. That's what I was coming to next. Like, with
 3 issues of this magnitude, there is a question
 4 in my mind that there might not have been
 5 value to have somebody to say, you do nothing
 6 but this. This is your issue, you pull it all
 7 together because clearly, one of the
 8 challenges here for me, for Dr. Williams and
 9 for the others involved was all of the things
 10 that were being juggled at that point in time.
 11 Now, because of the nature of the people that
 12 would be involved in that team, you had both
 13 physicians, multiple types of physicians and
 14 other professionals. So, in my mind, you'd
 15 need a very management oriented physician to
 16 take that on.
 17 THE COMMISSIONER:
 18 Q. So, you think that that's how, in the ideal
 19 world, it would have been -
 20 MR. TILLEY:
 21 A. Well, that's after me having thinking about
 22 this to say, you know, I don't think the
 23 original objectives, of course, we're not
 24 going to change. The original objectives
 25 being that, shut down the system and then

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1 start making patient follow-up. But clearly
 2 we ran into challenges with the execution.
 3 And they were unanticipated challenges, but
 4 they occurred.
 5 THE COMMISSIONER:
 6 Q. All right. Thank you. Sorry, Mr. Coffey, I
 7 interrupted you in -
 8 COFFEY, Q.C.:
 9 Q. No, no, that's--well, we were looking at P-
 10 137. Mr. Tilley, it's interesting to hear you
 11 explain that to the Commissioner because the
 12 next question is well, that sort of
 13 individual, somebody who's got sufficient
 14 medical terminology expertise and management
 15 inclination, people, energy. In this context
 16 would be somebody who had some ability to deal
 17 with, I'll use the word, crisis, large scale
 18 problem, management, but who would have the--
 19 what's the word--the stature to be able to
 20 manage all the various parties involved here
 21 including the different physician groups.
 22 That's really what you're getting at, isn't
 23 it?
 24 MR. TILLEY:
 25 A. That's what I've been thinking about.

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1 COFFEY, Q.C.:
 2 Q. Yes. Now, in this context, Bob Williams, that
 3 was not his job here, was it?
 4 MR. TILLEY:
 5 A. Well, Bob was responsible at the executive
 6 level for lab -
 7 COFFEY, Q.C.:
 8 Q. For the lab.
 9 MR. TILLEY:
 10 A. - and quality.
 11 COFFEY, Q.C.:
 12 Q. And quality. But in terms of dealing with the
 13 surgeons and the oncologists and managing
 14 their input, that wasn't his role here?
 15 MR. TILLEY:
 16 A. Well, yes, it was because he obviously had a
 17 role in terms of linking with the physicians.
 18 COFFEY, Q.C.:
 19 Q. Oh, linking, okay, I appreciate that, but I'm
 20 talking about, kind of, managing the overall
 21 response of Eastern Health. Who was managing
 22 the overall response of Eastern Health to
 23 this?
 24 MR. TILLEY:
 25 A. Well, Dr. Williams was certainly the main

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1 player in terms of follow up, but in many
 2 ways, we were all pitching in to try to help
 3 out.
 4 COFFEY, Q.C.:
 5 Q. Now, looking at P-0137, just look down, it's
 6 there on the screen. You're telling Mr.
 7 Abbott what you had done the prior morning and
 8 this is early on in the scenario. Could it be
 9 that looking at that, someone might conclude
 10 that at least at that stage you were
 11 performing that role, management role?
 12 MR. TILLEY:
 13 A. I guess if it was to be read outside of the
 14 conversations that Mr. Abbott would have,
 15 possibly. Am I responding to one of his e-
 16 mails there?
 17 COFFEY, Q.C.:
 18 Q. Well, what we can do and just so you know, so
 19 you have some sense, because the other--just a
 20 second now, gone past it. Thank you. In
 21 fact, the earlier e-mail is one of July 25,
 22 2005 at 9:36 that morning to yourself. It
 23 involves government proceeds, I'm sorry, with
 24 two health care initiatives in Labrador, but
 25 the PS is "Anything new on the ER/PR receptors

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1 issue."
 2 MR. TILLEY:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. "Minister is keen on this matter." And this
 6 is your response we're looking at there later
 7 on that morning. To tell the deputy minister
 8 that you are meeting on a Sunday morning with
 9 two physicians and you're talking about what
 10 else is going on in the organization, getting
 11 information from centres across the country
 12 about their experiences, contacting Ventana.
 13 The paragraph dealing with the specimens "we
 14 recently retested and report it's converting
 15 to positive. We included in that sample those
 16 originally reported as a weak positive. It
 17 would be expected that this would happen.
 18 What I am interested in are those that went
 19 from negative to positive. From an
 20 oncologist's perspective they don't
 21 distinguish between positive and weak
 22 positive." And you tell Mr. Abbott, "We have
 23 a lot of people trying to get more
 24 information" and including getting results in
 25 from across the province because the

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1 interpretation is done locally elsewhere. So
 2 when you look at that, sitting in John
 3 Abbott's shoes are the recipient of that,
 4 might one reasonably conclude that the author,
 5 the person who typed that out is managing the
 6 situation?
 7 MR. TILLEY:
 8 A. Well, I have known John Abbott for quite some
 9 time. He would know that my ability to get
 10 into the technical issues of this were
 11 limited. I'd be surprised if he felt that,
 12 but it's a possibility.
 13 COFFEY, Q.C.:
 14 Q. Well, see, you getting into technical issues
 15 may have been limited, and we heard about your
 16 reading of Dr. Banerjee's report yesterday,
 17 but you are focusing there on being concerned,
 18 not so much about the weak positive to
 19 positive, because that would be expected that
 20 this would happen, but you're concerned or
 21 interested in those that went from negative to
 22 positive. Now, you were sufficiently versed
 23 by that Monday to distinguish between the two?
 24 MR. TILLEY:
 25 A. I would probably have been referring to my

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1 notes that I had picked up during the
 2 meetings.
 3 COFFEY, Q.C.:
 4 Q. Yes. So you were that far into it?
 5 MR. TILLEY:
 6 A. Pardon?
 7 COFFEY, Q.C.:
 8 Q. You were at least that far into it in terms of
 9 -
 10 MR. TILLEY:
 11 A. Oh, yes, I just, I take sometimes very copious
 12 notes and sometimes thin, but I had some good
 13 ones there.
 14 COFFEY, Q.C.:
 15 Q. So you at least early on immersed yourself
 16 enough in this to know the difference between
 17 a weak positive and positive?
 18 MR. TILLEY:
 19 A. I think I understood that was on the low end.
 20 COFFEY, Q.C.:
 21 Q. And enough to have figured out that moving
 22 from weak positive to positive wouldn't be a
 23 surprise, but moving from negative to positive
 24 would be surprising, you figured that out?
 25 MR. TILLEY:

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1 A. Well, I had used my cheat sheets.
 2 COFFEY, Q.C.:
 3 Q. Yeah. Early on, like in July, 2005, do you
 4 think that Dr. Williams would have understood
 5 that this was his responsibility, handling
 6 this or dealing with it from an operational
 7 perspective in contradistinction to your
 8 responsibility?
 9 MR. TILLEY:
 10 A. Yeah. My e-mail to Mrs. Dawe, could that be
 11 pulled up?
 12 COFFEY, Q.C.:
 13 Q. Sure. If I could just--that is, sorry, it's
 14 July 20th. I'll just -
 15 MR. SIMMONS:
 16 Q. P-0074.
 17 THE COMMISSIONER:
 18 Q. Pardon?
 19 COFFEY, Q.C.:
 20 Q. I'm sorry.
 21 MR. SIMMONS:
 22 Q. P-0074, maybe?
 23 UNKNOWN SPEAKER:
 24 Q. P-0074.
 25 COFFEY, Q.C.:

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1 Q. P-0074, yes.
 2 THE COMMISSIONER:
 3 Q. Thank you, Mr. Simmons.
 4 COFFEY, Q.C.:
 5 Q. There it is.
 6 MR. TILLEY:
 7 A. I'm just -
 8 COFFEY, Q.C.:
 9 Q. You go ahead, Mr. -
 10 MR. TILLEY:
 11 A. I'm sorry. Can you see where the cursor is
 12 circling?
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 MR. TILLEY:
 16 A. Bob, this is my e-mail to Bob--sorry, to Joan
 17 Dawe. And it says, "Bob Williams has been
 18 heavily involved and is providing great
 19 leadership to the follow-up. I'll keep you
 20 posted."
 21 COFFEY, Q.C.:
 22 Q. And this is Wednesday before this?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. And so what--you've referred me to that, so is
 2 that a way of saying or indirectly saying,
 3 well, that means Bob is responsible for this
 4 and would have understood it?
 5 MR. TILLEY:
 6 A. Well, that was the reflection, yes.
 7 COFFEY, Q.C.:
 8 Q. So you thought Dr. Williams was handling it
 9 and you're telling us at least your
 10 understanding is he would have understood
 11 that, he was responsible for this?
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. So he comes in and says, I'm not saying he
 16 will, but if he comes in and says, "Well,
 17 actually, George Tilley I thought was doing
 18 it," that would be a surprise to you?
 19 MR. TILLEY:
 20 A. Yes, that would be a major breakdown in our
 21 communications.
 22 COFFEY, Q.C.:
 23 Q. I'm not saying it will happen, I'm just--
 24 because here we have heard different people at
 25 times, you know, thinking, well, A is doing it

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1 as opposed to B?
 2 MR. TILLEY:
 3 A. Um-hm. Well, every meeting that I would have
 4 had involving the minister Dr. Williams would
 5 have always been there and he would have been
 6 able to articulate the intricacies of this
 7 issue.
 8 COFFEY, Q.C.:
 9 Q. Now, with respect to this and apropos the
 10 Commissioner's questioning you about the
 11 trustees and the 18 advisors, as it were, did
 12 you ever ask Ms. Dawe for her input as to the
 13 disclosure to patients issue?
 14 MR. TILLEY:
 15 A. Mrs. Dawe and I had a fairly strong
 16 relationship.
 17 COFFEY, Q.C.:
 18 Q. Yeah.
 19 MR. TILLEY:
 20 A. I felt comfortable chatting to her about
 21 various issues, including discussions about my
 22 team. After the 20th when I e-mailed her, I
 23 recall that she had dropped in my office and
 24 unexpectedly, but she would often do that and
 25 chat with me if, in fact, I was there. I

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1 can't remember anything other than when she
 2 was advised that the intention is to follow-up
 3 with the patients -
 4 COFFEY, Q.C.:
 5 Q. What is -
 6 MR. TILLEY:
 7 A. The intention is to follow-up with the
 8 patients from the retesting.
 9 COFFEY, Q.C.:
 10 Q. In other words, not tell them until we have
 11 the retest results, is that what you're
 12 saying? The follow-up with the patients can
 13 cover a whole -
 14 MR. TILLEY:
 15 A. I'm not going to go that far at the moment.
 16 COFFEY, Q.C.:
 17 Q. Okay.
 18 MR. TILLEY:
 19 A. I'm just going to say the intent of the
 20 organization is that we're going to retest.
 21 COFFEY, Q.C.:
 22 Q. Okay.
 23 MR. TILLEY:
 24 A. These patients. And there was no suggestion
 25 other than, yes, that's what we would, in

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1 fact, be doing. The issues with regards to
 2 how that was going to happen I can't pull any
 3 particular time or moment out of my head that
 4 I would have had that conversation about that
 5 particular issue with her.
 6 COFFEY, Q.C.:
 7 Q. No, I was asking you about not so much the
 8 retesting and how that would occur, I'm asking
 9 you about disclosing to the patients the fact
 10 that their tissue samples were being retested.
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Did you ever ask her in the summer of '05 for
 15 input as to whether or not individual patients
 16 should be notified about this?
 17 MR. TILLEY:
 18 A. Yeah. And that was the answer I just gave
 19 you, to say I have no recollection -
 20 COFFEY, Q.C.:
 21 Q. You don't.
 22 MR. TILLEY:
 23 A. - about having a specific discussion around
 24 that. Not to say it didn't happen, but I just
 25 have no recollection of it.

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1 COFFEY, Q.C.:
 2 Q. And to ask the wider question, I take it you
 3 didn't ask the other board members either?
 4 MR. TILLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. You have no recollection? Certainly you
 8 didn't ask them?
 9 MR. TILLEY:
 10 A. No. I worked through the board chair other
 11 than during board meetings and subcommittee
 12 meetings.
 13 COFFEY, Q.C.:
 14 Q. In fact, do you have any reason to believe
 15 that the board really knew, the other members
 16 of the board knew anything about ER/PR until
 17 September of '05?
 18 MR. TILLEY:
 19 A. No, they wouldn't have known through the
 20 organization.
 21 COFFEY, Q.C.:
 22 Q. And why is that?
 23 MR. TILLEY:
 24 A. Well, Mrs. Dawe and I had obviously discussed
 25 it. Her original e-mail back to me refers to

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1 let's make sure we keep the board apprised
 2 before this issue becomes public. And I guess
 3 that was the issue that guided us and gave us
 4 the ability to use the face-to-face meeting in
 5 September to discuss it.
 6 COFFEY, Q.C.:
 7 Q. So you took that as that return e-mail by Joan
 8 Dawe that morning as you don't have to tell--
 9 you, George, or the board does not have to be
 10 told until just before the information goes
 11 public?
 12 MR. TILLEY:
 13 A. But that was only one piece of communication.
 14 As I indicated to you a few minutes ago -
 15 COFFEY, Q.C.:
 16 Q. You spoke to her subsequently?
 17 MR. TILLEY:
 18 A. Mrs. Dawe and I would have communicated
 19 throughout that summer and talked about this
 20 particular issue.
 21 COFFEY, Q.C.:
 22 Q. And wouldn't it be important for the board to
 23 at least know this was going on?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. Might they--when you think about it now, might
 3 they--if they knew en mass that this was going
 4 on, that they were aware of it as a group, you
 5 know, is it possible that they might have
 6 wanted to meet about it?
 7 MR. TILLEY:
 8 A. It's certainly possible, but I talked to the
 9 board chair and that was our decision.
 10 THE COMMISSIONER:
 11 Q. Mr. Coffey, whenever it's appropriate, we'll
 12 take the morning break.
 13 COFFEY, Q.C.:
 14 Q. Sure. Thank you, Commissioner. So amongst--
 15 wait now. So amongst all the groups involved
 16 in this, stakeholders and others, the summer
 17 of 2005 ended and to your knowledge the only
 18 groups that knew about this were a certain
 19 group within Eastern Health itself?
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Correct? Rob Ritter of the NLMA?
 24 MR. TILLEY:
 25 A. Possibly.

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1 COFFEY, Q.C.:

2 Q. Well, the e-mail suggests that -

3 MR. TILLEY:

4 A. Yes. That's why I say possibly.

5 COFFEY, Q.C.:

6 Q. Sure, possibly.

7 MR. TILLEY:

8 A. I don't know if it happened.

9 COFFEY, Q.C.:

10 Q. But whether or not the briefing happened, he

11 certainly knew about the issue? If Ritter is

12 going to be contacting Williams to get a

13 briefing, Ritter had to know that--about the

14 issue.

15 MR. TILLEY:

16 A. I'm trying to remember, was that--did it

17 specifically say ER/PR?

18 COFFEY, Q.C.:

19 Q. A briefing on this issue I think is the way

20 it's phrased.

21 MR. TILLEY:

22 A. Okay. So the executive director of the NLMA,

23 Eastern Health, a certain core group

24 internally, the Department of Health, at least

25 at the senior level and directors level and

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1 the minister, that's it?

2 THE COMMISSIONER:

3 Q. Chair of the board?

4 COFFEY, Q.C.:

5 Q. Chair of the board, yes, I'm sorry, the chair

6 of the board too.

7 MR. TILLEY:

8 A. I should have remembered that one,

9 Commissioner. And whatever communications the

10 Department of Health would have shared within

11 government internally.

12 COFFEY, Q.C.:

13 Q. But the patients didn't know, Canadian Cancer

14 Society didn't know, the public didn't know

15 and your fellow CEOs, to your knowledge,

16 didn't know?

17 MR. TILLEY:

18 A. That's -

19 COFFEY, Q.C.:

20 Q. That about summarizes it?

21 MR. TILLEY:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. Thank you, Commissioner.

25 THE COMMISSIONER:

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1 Q. Fifteen minutes. Thank you.

2 (RECESS)

3 THE COMMISSIONER:

4 Q. Please be seated.

5 COFFEY, Q.C.:

6 Q. Yes, Mr. Tilley, one--over the break Mr.

7 Simmons brought to my attention one other

8 group that you would have been aware of by the

9 end of the summer of '05 that Dr. Cook had

10 contacted pathologists throughout Newfoundland

11 back in June asking for the 2002 results?

12 MR. TILLEY:

13 A. Yes.

14 COFFEY, Q.C.:

15 Q. Or not results, I'm sorry, 2002 specimens,

16 negative specimens. Sir, the decision as to

17 whether or not to contact the patients

18 directly about this, you know, about the

19 retesting that was being undertaken was made

20 by--whose decision was that to make here?

21 MR. TILLEY:

22 A. There's a couple of pieces that are coming to

23 my mind. Initially the Department of Health

24 had referenced the letter whereas that

25 initially Eastern Health was working on the

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1 basis of a release. Then there was -

2 COFFEY, Q.C.:

3 Q. Eastern Health originally on public release?

4 MR. TILLEY:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. The department said letter?

8 MR. TILLEY:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. And then they started to draft -

12 MR. TILLEY:

13 A. Yes.

14 COFFEY, Q.C.:

15 Q. Eastern Health started to draft the letter.

16 Go ahead.

17 MR. TILLEY:

18 A. Then I recall receiving some input from the

19 communications director, Susan Bonnell, to

20 suggest that from her perspective it would be

21 more appropriate not to go out with a public

22 release, but to go with a personal contact

23 with the individual patients.

24 COFFEY, Q.C.:

25 Q. Such as a phone call or a letter, presumably?

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1 MR. TILLEY:
 2 A. Either/or were mentioned -
 3 COFFEY, Q.C.:
 4 Q. Yes, sure.
 5 MR. TILLEY:
 6 A. - which e-mail that I actually received.
 7 COFFEY, Q.C.:
 8 Q. Sure.
 9 MR. TILLEY:
 10 A. And the intention was pretty much to go in
 11 that direction from there on in. There were a
 12 couple of issues that came up during that
 13 point in time regarding whether the patients
 14 would be informed prior to the test coming
 15 back, because the intent was that we would
 16 advise the patients on return of the tests and
 17 that the assumption, of course, back in that
 18 time, is that the test results were going to
 19 be--or the retest results were going to be
 20 more quickly available.
 21 COFFEY, Q.C.:
 22 Q. Okay. And then what happened?
 23 MR. TILLEY:
 24 A. Well, there were a number of meetings,
 25 certainly continued discussions with regards

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1 to the letters.
 2 COFFEY, Q.C.:
 3 Q. You've referred to this, as well, Susan
 4 Bonnell's e-mail?
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. To you giving you her thoughts?
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. After the meeting with the minister she had
 13 her own thoughts on it and she did give you an
 14 e-mail and -
 15 MR. TILLEY:
 16 A. Right. I think it was the 22nd of July, that
 17 was a day after the meeting with the minister.
 18 COFFEY, Q.C.:
 19 Q. Sure. And in that e-mail she discussed the
 20 pros and cons from her perspective. One of
 21 the people, you've referred the Commissioner
 22 to this already, she did alert you to the
 23 idea, we got to talk to the--she urged you to
 24 talk to the oncologists, as well?
 25 MR. TILLEY:

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1 A. I think that was referenced in that memo.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. Right.
 6 COFFEY, Q.C.:
 7 Q. And so did that occur then, the oncologists
 8 were then consulted?
 9 MR. TILLEY:
 10 A. There were meetings with oncologists, and I
 11 can't recall if I had been involved in all of
 12 them or not, but there was certainly a point
 13 in time when the oncologists made it known
 14 that they felt that they were in a position to
 15 influence this decision having been the
 16 primary contacts with the patient. And what
 17 they were essentially saying is that they
 18 would prefer if the patients were contacted
 19 when the results were available and to do any
 20 earlier contact without any information to
 21 provide them -
 22 COFFEY, Q.C.:
 23 Q. You mean without the actual retest results?
 24 MR. TILLEY:
 25 A. Yes, sorry.

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1 COFFEY, Q.C.:
 2 Q. You'd have information to tell them that -
 3 MR. TILLEY:
 4 A. That's right, without the retest results. And
 5 believing that that would be the key piece of
 6 information that the patient would want to
 7 know.
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 MR. TILLEY:
 11 A. That until we had that information, they saw
 12 that as being undesirable and putting
 13 unnecessary anxiety and concern amongst the
 14 patients.
 15 COFFEY, Q.C.:
 16 Q. Okay. So they communicated that as their
 17 position?
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And what happened then?
 22 MR. TILLEY:
 23 A. There were some discussions back and forth
 24 with the department. I -
 25 COFFEY, Q.C.:

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1 Q. To communicate to the department the
 2 oncologists' views?
 3 MR. TILLEY:
 4 A. Right.
 5 COFFEY, Q.C.:
 6 Q. Yes.
 7 MR. TILLEY:
 8 A. And what comes to my mind is a telephone note
 9 between myself and Moira Hennessey where she
 10 had called inquiring and -
 11 COFFEY, Q.C.:
 12 Q. That was about the status of the patient
 13 letters?
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Yeah. And it must have been at that time,
 18 because I can't pull exactly out of my head
 19 that I must have mentioned the concerns of the
 20 oncologists. She must have gone off and
 21 talked to the minister because there was
 22 another note which says the minister is
 23 concerned about that approach. And I said,
 24 "Well, why don't we get the oncologists to
 25 come in to speak directly to this."

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1 COFFEY, Q.C.:
 2 Q. Okay.
 3 MR. TILLEY:
 4 A. And that's, in fact, what was done.
 5 COFFEY, Q.C.:
 6 Q. Yeah. And that happened, I take it, on August
 7 15th?
 8 MR. TILLEY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. The documents will bear that out.
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And the meeting of the minister, certainly one
 16 or more oncologists were there, yourself and a
 17 long list of people.
 18 MR. TILLEY:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. So go ahead, what do you--do you recall the
 22 meeting with the minister about that?
 23 MR. TILLEY:
 24 A. Well I have notes to that effect.
 25 COFFEY, Q.C.:

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1 Q. Sure, okay.
 2 MR. TILLEY:
 3 A. Certainly -
 4 COFFEY, Q.C.:
 5 Q. But in terms of the general kind of broad--I'm
 6 trying to get a sense for the Commissioner of
 7 it as opposed to kind of just reading your
 8 notes, because anybody can -
 9 MR. TILLEY:
 10 A. Oh, I know. I'm thankful for my notes -
 11 COFFEY, Q.C.:
 12 Q. Not anybody can read your writing, I agree.
 13 MR. TILLEY:
 14 A. No, no, no.
 15 COFFEY, Q.C.:
 16 Q. But -
 17 MR. TILLEY:
 18 A. I've been criticized for that many times.
 19 COFFEY, Q.C.:
 20 Q. But and I do want to thank you for the
 21 assistance at times that you've provided in
 22 deciphering them, okay. But the upshot of the
 23 meeting with the minister in terms of that was
 24 what?
 25 MR. TILLEY:

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1 A. Well, you know, again, Minister Ottenheimer
 2 took a great amount of interest in this and
 3 probably more involvement than any minister
 4 that I would have expected to have taken, but
 5 he shared everyone's interest in getting this
 6 dealt with. And he brought a unique
 7 perspective as a sort of a person outside of
 8 the organization but, you know, a government
 9 member with a legal background and all those
 10 sorts of things. But he certainly was
 11 interested in this issue of early
 12 notification. So hence, the reason why I was
 13 fostering an opportunity for him to hear about
 14 their perspective directly.
 15 COFFEY, Q.C.:
 16 Q. Okay.
 17 MR. TILLEY:
 18 A. I recall somewhere along the way that -- it
 19 might have been Dr. Laing -- it certainly was
 20 Dr. Laing. I don't know if there was another
 21 oncologist there, but somewhere during that
 22 meeting she definitely expressed the point
 23 that this -- she was representing the view of
 24 Dr's Ganguly, McCarthy, and herself, in terms
 25 of what position they were espousing.

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1 COFFEY, Q.C.:

2 Q. In this context in the middle of August of

3 2005, did respectful mean defer to?

4 MR. TILLEY:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. So that it was not only respect, but also

8 accept?

9 MR. TILLEY:

10 A. Oh, absolutely.

11 COFFEY, Q.C.:

12 Q. And ultimately take their route?

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Did they ever -- in the course of talking to

17 the physicians that summer about this matter

18 and notifying patients directly or the public,

19 or both, did the physicians involved ever

20 express any concerns about being overwhelmed

21 by phone calls about it or communications

22 about it, about their ability to respond?

23 MR. TILLEY:

24 A. I'm recalling an earlier e-mail when -- e-mail

25 or my notes when we had talked about --

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1 actually, it was the letter to Bob Williams,

2 the undated one he sent me, there's some

3 reference there to the oncologists wanting

4 some more information about timelines of the

5 retesting. So obviously it occurred to

6 somebody here that we need to be anticipating

7 how we deal with this, but whether, in fact,

8 they were sending a message at that point in

9 time that they were not in a position to

10 respond --

11 COFFEY, Q.C.:

12 Q. Well, did they ever during that summer voice a

13 concern about the ability of them as a group

14 to respond to -- if it went public entirely in

15 the sense of by way of a public announcement,

16 or even multiple letters out to hundreds of

17 patients, whichever way you went, or both,

18 their ability to actually handle the workload

19 that would be required to respond, did that

20 come up as a topic?

21 MR. TILLEY:

22 A. I don't recall it specifically. Of course, it

23 was only a question of when. At some point in

24 time we were going to get the results back and

25 had to be dealt with.

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1 COFFEY, Q.C.:

2 Q. I appreciate that. I'm more -- in terms of if

3 patients were to be told about the retesting

4 before it was completed, was anybody

5 expressing concern about their ability to

6 answer the phone sufficiently and continue to

7 do their work?

8 MR. TILLEY:

9 A. I don't recall specifically that issue.

10 COFFEY, Q.C.:

11 Q. John Ottenheimer has told the Commissioner

12 that that was raised.

13 MR. TILLEY:

14 A. Okay. I don't recall --

15 COFFEY, Q.C.:

16 Q. He didn't phrase it quite that way, but he was

17 talking about workload and ability to respond.

18 MR. TILLEY:

19 A. Okay.

20 COFFEY, Q.C.:

21 Q. So you don't --

22 MR. TILLEY:

23 A. No, unless my notes can help me out, I just

24 don't recall.

25 COFFEY, Q.C.:

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1 Q. It certainly doesn't stand out as a concern.

2 Did the -- in discussions that summer

3 particularly with, and internally within the

4 organization and with the oncologists, did

5 anyone or did you, at least, think to consult

6 your own organization's policy on patient

7 disclosure because you did have a written

8 policy?

9 MR. TILLEY:

10 A. We did have a written policy, and I believe

11 that policy was fairly current because, you

12 know, we were strong advocates for this issue.

13 So, yes, I would have been aware in general

14 terms that it existed.

15 COFFEY, Q.C.:

16 Q. Was it consulted, did you actually get it out

17 and read it?

18 MR. TILLEY:

19 A. I would have expected that that would have

20 been something that was well known to the

21 people who were involved in this.

22 COFFEY, Q.C.:

23 Q. So you didn't then get it out and read it and

24 see what exactly our policies are?

25 MR. TILLEY:

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1 A. I was pretty comfortable that the policy would
 2 have been that we would promote as an
 3 organization an openness to the patients at
 4 any time that it had been identified that they
 5 may have been impacted, or were impacted by a
 6 potential adverse event.
 7 COFFEY, Q.C.:
 8 Q. And the policy doesn't say you have to wait
 9 until you know the result of any retest, the
 10 policy is to notify the patient when the
 11 problem is recognized.
 12 MR. TILLEY:
 13 A. The way I look at it is that it's only when we
 14 know on a retest that there was a particular
 15 event.
 16 COFFEY, Q.C.:
 17 Q. Okay. So until -- from your perspective, the
 18 policy as it then existed would have mandated
 19 that the patients not be told until a retest
 20 result was back because you wouldn't know
 21 about the conversion?
 22 MR. TILLEY:
 23 A. Of course, the mandate is not specific to any
 24 particular incident.
 25 COFFEY, Q.C.:

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1 Q. But it's a policy.
 2 MR. TILLEY:
 3 A. The policy is really designed to deal with
 4 situations such as inaccurate medication being
 5 given or a surgical problem in the OR, and
 6 those are the types of things that it was
 7 designed for. It was really not designed to
 8 deal with multiple patient issues. That was
 9 obviously not contemplated in the design of it
 10 and probably had some limits, therefore, if it
 11 was to be applied that way.
 12 COFFEY, Q.C.:
 13 Q. So once you got beyond a couple of patients at
 14 a time, I take it that that policy -- from
 15 your perspective, that policy wouldn't apply?
 16 MR. TILLEY:
 17 A. Well, I know there were patients contacted
 18 about changes in their results.
 19 COFFEY, Q.C.:
 20 Q. No, no, I'm talking about before changes in
 21 their results.
 22 MR. TILLEY:
 23 A. Okay.
 24 COFFEY, Q.C.:
 25 Q. That's what I'm trying to focus on. Your

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1 understanding of the policy is what, a patient
 2 is to be told when a problem or potential
 3 problem is recognized and then followed up
 4 with to be told the results of the
 5 investigation or the problem, or is only to be
 6 told about the problem after the investigation
 7 is over and the problem has been confirmed?
 8 MR. TILLEY:
 9 A. Well, it would be to know that the patient
 10 actually was involved with a problem or not.
 11 COFFEY, Q.C.:
 12 Q. So if you recognized that patient "A"
 13 potentially received, for example, an
 14 incorrect treatment, but it wasn't known yet
 15 whether that was so, the policy on adverse
 16 events require what, that the patient be told
 17 at that point and then be told what the result
 18 was, or you didn't tell the patient anything
 19 until you had the thing fully investigated?
 20 MR. TILLEY:
 21 A. Well, not fully investigated, but certainly to
 22 know that the patient actually had an
 23 incorrect result.
 24 COFFEY, Q.C.:
 25 Q. So if that was the policy, then why would it

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1 be contemplated that anyone be told at all
 2 here?
 3 MR. TILLEY:
 4 A. Until they got the result back?
 5 COFFEY, Q.C.:
 6 Q. Until they got the result back.
 7 MR. TILLEY:
 8 A. Well, I mean, this was a very unique situation
 9 and that was the first point of thought. I
 10 mean, that's where policies sometimes have to
 11 be looked at in the context of the situation
 12 you find themselves in, and I guess it was a
 13 balance call then in terms of do we utilize
 14 our policy with respect to a change result, or
 15 do we bypass the policy and talk about this in
 16 terms of the open disclosure interest.
 17 COFFEY, Q.C.:
 18 Q. Just so I'm clear on this, your understanding
 19 of the policy, of your organization's policy
 20 is until someone in a position of informed
 21 authority has satisfied him or herself that
 22 there truly is a problem with a patient's
 23 treatment, that the patient will not be told
 24 about the problem until that point in time?
 25 MR. TILLEY:

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1 A. I don't think --

2 COFFEY, Q.C.:

3 Q. Does it have to go that fair, or, like, when

4 in the process is a patient under the policy

5 supposed to be told?

6 MR. TILLEY:

7 A. Right. Well, I've always worked on the

8 assumption that when we know that there's a

9 particular adverse event that would apply to a

10 patient, that we would make contact with that

11 patient.

12 COFFEY, Q.C.:

13 Q. How about a potential adverse event and you're

14 in the course of trying to figure out --

15 MR. TILLEY:

16 A. I'm not sure that policy specifically

17 addresses that.

18 COFFEY, Q.C.:

19 Q. Okay. P-056, bring it up on the screen,

20 please.

21 REGISTRAR:

22 Q. P-056?

23 COFFEY, Q.C.:

24 Q. I think so.

25 THE COMMISSIONER:

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1 Q. That probably won't be in your -- or is it?

2 Is it in the books? I don't think so.

3 COFFEY, Q.C.:

4 Q. Okay. Page 18, actually.

5 THE COMMISSIONER:

6 Q. The earlier numbers would probably not be in

7 your book.

8 COFFEY, Q.C.:

9 Q. Thank you, Registrar. Now this is a -- the

10 title is "Guidelines and disclosure of adverse

11 events, issuing authorities of VP Medical

12 Services". That would be Dr. Williams'

13 signature, wouldn't it?

14 MR. TILLEY:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. August 1, 2005, although -- it was signed,

18 although it's type dated September 9th, 2004,

19 and when we look at this, it defines an

20 adverse event. I take it certainly having an

21 originally incorrect or arguably incorrect

22 ER/PR result would be an adverse event?

23 MR. TILLEY:

24 A. If there was a different result, yes.

25 COFFEY, Q.C.:

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1 Q. And if it was thought that the second result

2 was more likely than not the more accurate?

3 MR. TILLEY:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. So it would be an adverse event. Now this

7 refers to --

8 THE COMMISSIONER:

9 Q. I'm sorry, I'm understanding the witness to

10 say that looking at this, it is still your

11 view that in order for it to be an adverse

12 event, you have to have a change in result?

13 MR. TILLEY:

14 A. That's correct, and then it says up there,

15 particularly those that may cause risk to a

16 patient, and the issue of "may", I interpreted

17 that as, you know, if the result changes, it

18 may or may not be a risk to the patient, but

19 that would be obviously a factor.

20 COFFEY, Q.C.:

21 Q. So if someone, for example, in the summer of

22 2005 in the first wave of patients that tissue

23 samples were tested before Mount Sinai was

24 thought of at all --

25 MR. TILLEY:

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1 A. Yes.

2 COFFEY, Q.C.:

3 Q. Okay, in terms of retesting, a number of them

4 came back as confirmed negative.

5 MR. TILLEY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. So for them, this would not be an adverse

9 event under this policy?

10 MR. TILLEY:

11 A. And it came back and negative was no change?

12 COFFEY, Q.C.:

13 Q. Yes.

14 MR. TILLEY:

15 A. I understand.

16 COFFEY, Q.C.:

17 Q. They need not be told under this policy?

18 MR. TILLEY:

19 A. Not based on what I can see here.

20 COFFEY, Q.C.:

21 Q. Okay. Now do you think -- just thinking about

22 this, do you think if there is concern within,

23 for example, a department, like the Clinical

24 Laboratory Department, about the accuracy of a

25 particular testing process, the accuracy has

Page 121

1 been -- you know, there's a question about the
 2 accuracy, do you think if you were the
 3 patient, would you want to know?
 4 MR. TILLEY:
 5 A. Well, a concern about an accuracy, I know
 6 that's an important concern, but the question
 7 is whether that applied to a particular
 8 patient. This policy for me was looking at
 9 the patient's impact because of an issue that
 10 had been identified.
 11 COFFEY, Q.C.:
 12 Q. Okay, but leaving aside the policy for a
 13 moment; yourself, if you were a patient and
 14 you learned or it was apparent -- if you were
 15 otherwise informed or could be informed that
 16 senior lab personnel had concerns about the
 17 accuracy of an earlier reported result for
 18 you, and concerns were raised about even on
 19 the retest using the Ventana that initially
 20 they were comfortable with the retest result,
 21 and then they began to wonder if the retest
 22 result was correct or not, as a patient, do
 23 you think -- would you want to know that?
 24 MR. TILLEY:
 25 A. Well, that's a personal judgment, isn't it?

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1 COFFEY, Q.C.:
 2 Q. Yes. Well, I'm asking.
 3 MR. TILLEY:
 4 A. And I'm suspecting that different people will
 5 look at it different ways, and I think the
 6 results were that there were mixed opinions to
 7 that. There were people that wanted to know,
 8 and there were other people who were saying
 9 why call me until I know more. So, I guess, it
 10 comes down to a judgment call.
 11 COFFEY, Q.C.:
 12 Q. Okay, and in this context and based upon what
 13 you've described for us, the people who made
 14 the choice for everybody involved were the
 15 oncologists in terms of that?
 16 MR. TILLEY:
 17 A. Well, they certainly influenced the position
 18 of others, yes.
 19 COFFEY, Q.C.:
 20 Q. But you were inclined the other way, you were
 21 inclined the other way yourself, as I
 22 understand?
 23 MR. TILLEY:
 24 A. With going to open public disclosure?
 25 COFFEY, Q.C.:

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1 Q. Yes.
 2 MR. TILLEY:
 3 A. Well, that was the original thought that Dr.
 4 Williams had espoused and --
 5 COFFEY, Q.C.:
 6 Q. How about you?
 7 MR. TILLEY:
 8 A. And unless there was something to the
 9 contrary, that seemed to be an appropriate
 10 route to go.
 11 COFFEY, Q.C.:
 12 Q. So you were in Dr. Williams camp on that?
 13 MR. TILLEY:
 14 A. Until people started talking about the
 15 importance of focusing on the individual.
 16 COFFEY, Q.C.:
 17 Q. Sure, and that's the oncologist, I take it?
 18 MR. TILLEY:
 19 A. Well, Susan, of course, was the first time
 20 that, after the letter from the Department,
 21 who had given me some input in terms of how
 22 she felt that issue should be dealt with.
 23 COFFEY, Q.C.:
 24 Q. But she, in effect, referred you out to the
 25 oncologists and said you got to talk to them?

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1 MR. TILLEY:
 2 A. Well, I think she was mentioning that we can't
 3 forget a very key group that are going to want
 4 to know about this.
 5 COFFEY, Q.C.:
 6 Q. And then you went off and talked to them, and
 7 you've described what happened?
 8 MR. TILLEY:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And as you said, it was their view, you
 12 deferred to their view?
 13 MR. TILLEY:
 14 A. Yes. You know, I -- it would have been
 15 unacceptable in retrospect not to have
 16 consulted the health professionals who are the
 17 ones that are dealing with these patients.
 18 COFFEY, Q.C.:
 19 Q. In deferring to their view, and their view was
 20 pretty well contrary to a number of other
 21 views, in effect they decided it then for all
 22 concerned?
 23 MR. TILLEY:
 24 A. Yes, I think that concern about the patient
 25 would be primary in everybody's interest.

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1 COFFEY, Q.C.:

2 Q. Now, sir, in terms of this policy, it does

3 refer to, for example, I believe there on the

4 bottom of the first page of it, procedure,

5 paragraph two, "Initiative an occurrence

6 report".

7 MR. TILLEY:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. Do you know if that was ever done?

11 MR. TILLEY:

12 A. I have never seen an occurrence report.

13 COFFEY, Q.C.:

14 Q. Is that a particular form?

15 MR. TILLEY:

16 A. Yes, I believe it is, designed for individual

17 patient adverse events.

18 COFFEY, Q.C.:

19 Q. Now in terms of -- here under paragraph seven

20 which deals with disclosure, 7(g) document the

21 discussion in the patient's health record, do

22 you know if the discussions in this regard

23 have ever been documented in patient's health

24 records?

25 MR. TILLEY:

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1 A. I can't speak to it, sir, no.

2 COFFEY, Q.C.:

3 Q. Whose responsibility would that have been?

4 MR. TILLEY:

5 A. That would have been whichever person was

6 talking to the patient.

7 COFFEY, Q.C.:

8 Q. Paragraph 8, documentation of disclosure, and

9 the word "most" is in italics and bolded.

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. Be placed in a patient's health record. Do

14 you know if that was ever done?

15 MR. TILLEY:

16 A. Same response.

17 COFFEY, Q.C.:

18 Q. At the time, in the summer of 2005, did you

19 consult with any other organization of which

20 you were aware or were a member concerning the

21 disclosure issue?

22 MR. TILLEY:

23 A. The only conversation that I can recall having

24 about disclosure was when I talked to the CEO

25 from Patient Safety Institute, but I think

Page 127

1 that was a little bit later.

2 COFFEY, Q.C.:

3 Q. That was later on.

4 MR. TILLEY:

5 A. Yeah. I don't --

6 COFFEY, Q.C.:

7 Q. That's after it actually went public.

8 MR. TILLEY:

9 A. Okay, I don't recall anything prior to that.

10 COFFEY, Q.C.:

11 Q. Is there any reason why you didn't consult

12 anyone else at the time? Like, outside

13 Newfoundland?

14 MR. TILLEY:

15 A. Well other than the fact that or based upon

16 the fact that the feedback that I did

17 subsequently get, it appeared that most people

18 were struggling, or at least Mr. Hassen and

19 some of the people that I would have talked to

20 just happened to be talking to post this, that

21 that was going to be an issue for everybody to

22 try and get their heads around: how do you

23 deal with multiple patients.

24 COFFEY, Q.C.:

25 Q. I appreciate it and a lot of that conversation

Page 128

1 with Mr. Bell and -

2 MR. TILLEY:

3 A. I know, it was all afterwards.

4 COFFEY, Q.C.:

5 Q. - company occurred in the fall. I'm asking

6 you about before that.

7 MR. TILLEY:

8 A. No.

9 COFFEY, Q.C.:

10 Q. And so it didn't occur to you or you thought

11 of it and decided against it?

12 MR. TILLEY:

13 A. I think we felt that this was a complex issue.

14 We weren't aware of anybody having to deal

15 with this size of issue again. We thought we

16 were doing the right thing by going back and

17 following it up with the patients. We thought

18 -

19 COFFEY, Q.C.:

20 Q. I take no issue with that, sir.

21 MR. TILLEY:

22 A. I just restate it for my own wellbeing.

23 COFFEY, Q.C.:

24 Q. Sure, but in terms of it didn't occur to you

25 and it wasn't, no one within your organization

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1 brought it to your attention or the Department
 2 of Health, for that matter, didn't come to you
 3 and say, "Listen George, have you consulted
 4 anybody outside the province?"
 5 MR. TILLEY:
 6 A. No, I can say I haven't, but I would suspect
 7 that in the development of this policy, there
 8 would have been consultation with people.
 9 COFFEY, Q.C.:
 10 Q. Oh no, not in the policy, I'm not talking
 11 about this policy, I'm talking about at the
 12 time, just in dealing with this now, this
 13 issue of disclosure and patient disclosure in
 14 the summer of '05, unprecedented from your
 15 perspective -
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Until it actually--after it actually went
 20 public in October of '05, do you have any
 21 recollection of anyone raising with you or
 22 thinking yourself about the notion of going
 23 outside the province to ask one or more people
 24 their thoughts on the issue of patient
 25 disclosure?

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1 MR. TILLEY:
 2 A. Not me personally.
 3 COFFEY, Q.C.:
 4 Q. And no one raised it within your hearing,
 5 anyway, or sight?
 6 MR. TILLEY:
 7 A. I'm not recalling but it wouldn't surprise me
 8 if others may have contacted -
 9 COFFEY, Q.C.:
 10 Q. But it wasn't brought to your attention as to
 11 what the advice, if this -
 12 MR. TILLEY:
 13 A. I can't recall.
 14 COFFEY, Q.C.:
 15 Q. And, sir, just in terms of timing, if we could
 16 look at P-0076 please? And I appreciate you
 17 are very unlikely to have ever seen this
 18 document, okay, but it's the subject matter of
 19 it I want to ask you about. This is a memo,
 20 Health Care Corporation of St. John's
 21 letterhead, title of memo, "To all
 22 Pathologists, Pathology Residents, Department
 23 of Pathology, St. John's Hospitals, Eastern
 24 Health. It's from Drs. Donald Cook and Bev
 25 Carter. It's dated July 28th, 2005 and it's

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1 Re: "Optimal Assessment and Reporting of
 2 Hormone Receptor Status in Infiltrating
 3 Carcinoma." And it begins, "When ordering and
 4 reporting ER/PR status on infiltrating
 5 carcinoma of the breast."--and then there are,
 6 if you go on to the next page, there are
 7 actually nine different things specified as to
 8 what should, I gather, be done from a
 9 pathologist's perspective.
 10 MR. TILLEY:
 11 A. Okay.
 12 COFFEY, Q.C.:
 13 Q. Now this is not signed by Drs. Cook or Carter
 14 and I'll be asking them about this when they
 15 testify, but in late July of '05 or early
 16 August of '05, do you recall anybody bringing
 17 to your attention the idea that the two
 18 pathologists most primarily involved in this,
 19 Drs. Cook and Carter, had by then identified
 20 certain things that they wanted to alert all
 21 other pathologists to? Did anybody bring that
 22 up with you?
 23 MR. TILLEY:
 24 A. I don't recall, no.
 25 COFFEY, Q.C.:

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1 Q. Okay. P-0079 please? Now again I appreciate,
 2 Mr. Tilley, it's April 2nd, 2005 letter to Don
 3 Cook from Beverley Carter. It's copied to Dr.
 4 Bob Williams and I appreciate, of course, that
 5 you as likely did not see this, I think you've
 6 told us you didn't, but this is a letter where
 7 she says "Regretfully I inform that I wish to
 8 withdraw from my organizational role in the
 9 investigation of the problems with ER/PR
 10 testing." So you have indicated that you had
 11 understood at one point anyway, the Dr. Cook
 12 was being assisted by Dr. Carter in the
 13 investigation.
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Was it ever brought to your attention, at
 18 least at this point, she was withdrawing from
 19 that -
 20 MR. TILLEY:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Now, she does say here and you've referred to
 24 a meeting that you recall she attended, I
 25 think it's the one where you met her.

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1 MR. TILLEY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And she said here, "The meeting with Mr.
 5 George Tilley on August 1st, 2005, showed, in
 6 my opinion, that Mr. Terry Gulliver and Mr.
 7 Barry Dyer do not have a good understanding of
 8 the limitations of a automated
 9 immunohistochemistry, rigorous clinical and
 10 technical validation of antibodies against ER
 11 and PR and establishment of a reliable and
 12 reproducible means of providing ER/PR results
 13 to our patients, using this substantial
 14 published, peer reviewed and accepted
 15 scientific literature on the development of
 16 and continuous monitoring of an
 17 immunohistochemical testing protocol.
 18 It became clear to me during that meeting
 19 that the current administrative structure
 20 within Eastern Health and within the
 21 laboratory allows decisions regarding the
 22 development of reliable and reproducible
 23 system for assessing hormone receptor status
 24 to remain in the hands of paraprofessional
 25 staff within the laboratory." She says, she

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1 is happy to continue to provide her
 2 professional opinion whenever it was sought,
 3 but in an advisory role only and she's not
 4 going to accept or it shouldn't be
 5 misconstrued her doing so as accepting any
 6 responsibility for the procedures, protocols
 7 or ER/PR results in the lab.
 8 Now you had attended this meeting, this
 9 is a meeting she's referring to here, the
 10 August 1 one, does that assist you in
 11 recalling any more about the meeting? This is
 12 a large meeting, a lot of people there.
 13 MR. TILLEY:
 14 A. It is and I think I referred to this meeting
 15 yesterday.
 16 COFFEY, Q.C.:
 17 Q. Yes, you did.
 18 MR. TILLEY:
 19 A. And I believe it was my first, if not only
 20 time that I had actually met Dr. Carter. If
 21 there was another one, I can't imagine it
 22 being any more than once. There were multiple
 23 people around that table and again, you have
 24 an appreciation for now as to how I visualize
 25 and recollect things, but there were

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1 oncologists, there were pathologists, i.e.
 2 Cook and Carter, Dr. Williams, myself, Heather
 3 Predham. I'm thinking there was a surgeon
 4 there and I keep thinking it's Dr. Kwan. This
 5 is the meeting that I referred to you where I
 6 remember thinking that here I am as a CEO of a
 7 new organization that's just trying to get its
 8 legs off the ground and here's this major
 9 issue and I'm starting to feel some of the
 10 disagreement.
 11 COFFEY, Q.C.:
 12 Q. Disagreement between whom?
 13 MR. TILLEY:
 14 A. Well I do, after giving it much reflection, I
 15 do have some notes here, but I have a point
 16 that was referenced blame, right, and that's
 17 where there was some challenges going back and
 18 forth between Dr. Carter and Mr. Gulliver. I
 19 can't remember if Mr. Dyer, Barry Dyer was
 20 there at that meeting or not, I have a vague
 21 recollection. So there was conversation going
 22 back and forth that way. I think that was the
 23 meeting that I was also learning about the
 24 issue of the oncology treatment practices was
 25 in the middle of changing. I'm not sure where

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1 it was, so originally it was 30 percent
 2 positive and up, you got Tamoxifen, then it
 3 went down to 10 and some organizations were
 4 treating everything that was positive and then
 5 they were talking about the need for standard
 6 reporting and those sorts of things. Dr.
 7 Carter was certainly a very knowledgeable
 8 individual. I'm sensing that Mr. Gulliver was
 9 also speaking very confidently for what the
 10 technologist's role was. So, you know, the
 11 discussion was a concern to me, I think the
 12 original time that you and I talked about
 13 this, I was thinking that there was something
 14 about discomfort and it was only when I saw my
 15 notes that it aided me in terms of making a
 16 decision and that was the meeting. I remember
 17 at the end of it having to draw some
 18 conclusion to it, in to say we got to forget
 19 about sort of who owns what piece or, you
 20 know, shifting some of the blame to someone or
 21 another. What was important here was to work
 22 for a resolution and that the patient had to
 23 be in the forefront of that resolution.
 24 COFFEY, Q.C.:
 25 Q. So it had deteriorated that far within the

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1 discussion.

2 MR. TILLEY:

3 A. Yeah, and I, you know, I just sort of felt

4 that I had a responsibility at that point in

5 time to sort of bring this together because

6 there was a lot of things going on.

7 COFFEY, Q.C.:

8 Q. What about--Dr. Williams would have been

9 there, I presume, wouldn't he?

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. So I take it that you witnessed a situation

14 where he, at least, did not assert himself

15 sufficiently to diffuse the situation or take

16 control of it?

17 MR. TILLEY:

18 A. I don't know if I gave him a chance. I just

19 saw the opportunity and really wanted to say

20 that.

21 COFFEY, Q.C.:

22 Q. How about--so I take it this was, at least at

23 one point it must have been acrimonious?

24 You're talking about blame and shifting of

25 responsibility, wouldn't you agree normally by

Page 138

1 that point it time it's -

2 MR. TILLEY:

3 A. Yeah, I don't know if I've been too accustomed

4 to that type of environment that it doesn't

5 cause me to think about those things as being

6 overly problematic or not. I don't remember

7 anybody getting up and shouting and pounding

8 the table. I mean, they were talking to one

9 another across a large boardroom table.

10 COFFEY, Q.C.:

11 Q. And there were disagreements and it was

12 apparent.

13 MR. TILLEY:

14 A. Yes. I mean, I, again, think of my notes and

15 I have some sort of summary things, points

16 that I had at the end of the meeting, but I

17 clearly had in that list blame or blaming.

18 COFFEY, Q.C.:

19 Q. Sure. And blaming, accusations as to

20 responsibility back and forth.

21 MR. TILLEY:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. Okay, and that was between the senior

25 technologists in the room and at least one

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1 other pathologist in the room.

2 MR. TILLEY:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. In terms of, you know, because you've told the

6 Commissioner about the idea of--and it's

7 existed within the health care community for a

8 period of time, I gather, the idea of a

9 blameless approach?

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. Were you surprised to see, then, this

14 happening? If that's supposed to be the

15 understood culture?

16 MR. TILLEY:

17 A. Well, when I became the board member of the

18 Canadian Patient Safety Institute, I was put

19 right in the middle of what can be done

20 nationally to try to improve on patient

21 safety? With the evidence suggesting that

22 seven and a half patients out of a hundred

23 experience an adverse event, my first reaction

24 was that's not possible or God, that must be

25 happening somewhere else, but not here. And I

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1 learned that it wasn't only me that was

2 thinking that that number was high, most

3 people were saying it was high. But the

4 occurrence reports and, you know, the general

5 information was clearly implying that the

6 number was much less. So as part of the

7 speculation as to why that may be so, then the

8 issue was coming out that maybe it's simply

9 not reported and possibly one of the reasons

10 it's not reported is people are fearing

11 reprisal if in fact it's learned that they

12 have caused or been involved in a particular

13 adverse event. And the discussion or the

14 thinking goes along that, you know, we got to

15 encourage people to be open if they ever feel

16 that they are involved in an adverse event to

17 a patient's outcome, because just possibly

18 there's an opportunity to rectify the

19 situation at that time. So you want to

20 encourage early disclosure. And secondly, you

21 want to encourage disclosure in the event that

22 it lends itself to being able to avoid a

23 similar situation, so Canadian Patient Safety

24 movement that I was one of the founders, in

25 terms of boards of directors, were really

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1 strongly advocating for a blameless culture.
 2 Now, that was starting to come out and
 3 infiltrate itself throughout the country. I
 4 can tell you even within Eastern Health or
 5 Health Care Corporation certainly, as I came
 6 back and started to speak to that, there were
 7 conflicting cultures because traditionally in
 8 the past if we had identified a nurse who may
 9 have inadvertently given a wrong medication,
 10 the first response was, well what's the
 11 appropriate discipline? But the whole
 12 thinking had started to change and I've spoken
 13 to you about this before, Mr. Coffey, that if
 14 there ever was an education that one could get
 15 to increase your ability, as a health care
 16 provider, it would be to have experience in
 17 adverse event. I equated the analogy to
 18 having a car accident, from that moment on,
 19 you are conscious more of everything that you
 20 do when you are driving, so the point is is
 21 that it's very unfortunate that these things
 22 happen, but the idea of having a blameless
 23 culture is really to focus in on making things
 24 better, not to turn around and focus in on who
 25 did something wrong. So, back to your point

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1 and I apologize for rambling a bit, but it is
 2 an important issue to me, there was evidence
 3 at that meeting of this is not my issue, this
 4 is your issue, or you should have done that,
 5 not me.
 6 COFFEY, Q.C.:
 7 Q. And in terms of that, your exposure to the
 8 idea of trying to create, I'll refer to it as
 9 a blameless approach, goes back to your Health
 10 Care Corporation days, circa what time, what
 11 era?
 12 MR. TILLEY:
 13 A. Well, my CV referred to the Canadian Patient
 14 Safety Institute. If there's a way that we
 15 can pull up that, it will give you some idea
 16 when I was starting to appreciate what that
 17 was.
 18 THE COMMISSIONER:
 19 Q. 315.
 20 COFFEY, Q.C.:
 21 Q. 315 please? Page 5, please.
 22 MR. TILLEY:
 23 A. So 2003, 2006 that was all happening around
 24 that time.
 25 COFFEY, Q.C.:

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1 Q. So what steps were taken when you first came
 2 back to Eastern Health--I'm sorry, it would
 3 have been the Health Care Corporation at the
 4 time, were there any concrete steps that you
 5 can point the Commissioner to that were taken
 6 by you, as CEO, to further a blameless culture
 7 approach?
 8 MR. TILLEY:
 9 A. Well I would have been invited to speak within
 10 the organization because we used to regularly
 11 have quality type workshops and my connection
 12 with the Canadian Patient Safety Institute
 13 would have made me able to bring a national
 14 perspective, as well as a local one.
 15 Certainly at our executive team levels, we
 16 talked about this quite regularly and it would
 17 often come immediately to the table when we
 18 had a particular adverse event and the human
 19 resources people would be traditionally
 20 looking to do what our traditional practices
 21 were, and that is take a disciplinary route,
 22 but by this time, I recall that the quality
 23 people would be coming back and saying, no,
 24 there's a new approach here and Tilley is a
 25 strong advocate for it. So it was certainly

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1 an active point of discussion. Now, whether I
 2 can say to you Policy 45, Section 3, I'm going
 3 to have to let somebody else articulate it
 4 because I don't know if that's identified that
 5 way.
 6 COFFEY, Q.C.:
 7 Q. If it ever got that far in the sense of a
 8 written policy or a memo disseminated.
 9 MR. TILLEY:
 10 A. Right, right.
 11 THE COMMISSIONER:
 12 Q. Does that mean there's no discipline
 13 procedures in Eastern Health now?
 14 MR. TILLEY:
 15 A. Oh absolutely not. It was a blameless
 16 culture, if in fact there was a belief that an
 17 adverse event was caused by a deliberate act
 18 of an individual, then that would have to be
 19 investigated and likely could, in fact, end up
 20 in a disciplinary issue. If in fact the whole
 21 issue was an unfortunate adverse effect, not
 22 due to anybody's intent, then we looked at it
 23 as being--and this is a national issue,
 24 Commissioner, that I speak to and you will
 25 find evidence to this elsewhere, but that the

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1 preferred route is to encourage openness so
 2 that people can come forward and admit a
 3 problem as quickly as possible in the event
 4 that there is some recovery or response
 5 strategy that could minimize or mitigate or
 6 eliminate the risk to the patient.
 7 COFFEY, Q.C.:
 8 Q. And in terms of that, is the patient supposed
 9 to be notified?
 10 MR. TILLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. So certainly by August 1 or during the August
 14 1st meeting you've referred to, it became
 15 apparent to you that your message had not
 16 entirely taken hold in the organization. Did
 17 you do anything afterward to address that?
 18 Other than making the comment about patient's
 19 care.
 20 MR. TILLEY:
 21 A. I made a pitch to the organization, at the
 22 executive level and in quality it was clear
 23 that that was the direction we were headed
 24 into. Now, whether in fact I'm going to be
 25 able to avoid that blame game at an

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1 operational level, I suspect that's human
 2 nature.
 3 COFFEY, Q.C.:
 4 Q. So in terms of having witnessed this exchange,
 5 which you did, you had to intercede to
 6 diffuse, I suppose, or redirect, did you take
 7 any step afterward, kind of go out on the day
 8 or two afterwards and say to whoever is
 9 appropriate, now take a memo to everybody in
 10 the organization as follows, I want to
 11 reiterate that, that sort of a memo?
 12 MR. TILLEY:
 13 A. No, I didn't, Mr. Coffey, like that would be a
 14 knee-jerk reaction. By this time, the
 15 organization had accepted this as a very
 16 important direction and that's where we were
 17 moving forward.
 18 COFFEY, Q.C.:
 19 Q. In terms of having left the meeting that day
 20 of August 1st, I mean, did you have any
 21 follow-up discussions with Dr. Williams about
 22 how this was going to be handled? I mean,
 23 you've seen a certain amount of acrimony or
 24 discord in the meeting between some of the key
 25 people involved in addressing this. Did you

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1 follow up with Dr. Williams about how Bob, how
 2 are you going to handle this. I made my
 3 little speech, but in the meantime, how are
 4 you going to handle this tomorrow or the next
 5 day? Did you ever do that?
 6 MR. TILLEY:
 7 A. There were some references in my notes to
 8 communications within the lab, so it was
 9 clearly known that we had to do something
 10 there to try and build the relationship that
 11 was noted between Dr. Carter and Mr. Gulliver.
 12 And I have a suspicion that that was maybe
 13 spilling over with some of the pathologists
 14 and the technologists in general. And I do
 15 recall something to the effect about Dr.
 16 Williams asking Dr. Cook to pay particular
 17 attention to that in terms of seeking a
 18 resolution to it.
 19 COFFEY, Q.C.:
 20 Q. And? Anything further on it?
 21 MR. TILLEY:
 22 A. I can't--I'll have to leave that story to
 23 somebody else.
 24 COFFEY, Q.C.:
 25 Q. Okay. Now, sir, if we could please,

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1 Registrar, Exhibit P-0333.
 2 THE COMMISSIONER:
 3 Q. That one should be in your book, I believe,
 4 Mr. Tilley.
 5 MR. TILLEY:
 6 A. Yes, it is, Commissioner.
 7 COFFEY, Q.C.:
 8 Q. Now this is an e-mail from Friday, August
 9 12th, 2005 at 3:09 p.m. from Susan Bonnell to
 10 Dr. Williams and yourself, carboned to Joyce
 11 Penney and the subject is ER/PR. "Hi,
 12 attached are a memo that includes the key
 13 messages, draft, not reviewed, and a drafted
 14 letter from QI/Communications for
 15 changes/revisions I can be reached at"--a
 16 particular number. Now this and the document
 17 attached, I'll just scroll down, you have, of
 18 course, the paper copy. It's in reverse order
 19 here, that's the order in which they came to
 20 us. On Health letterhead, "Communication's
 21 options ER/PR testing of St. John's Hospitals,
 22 August 12th, 2005." The issue is framed right
 23 here, the approach and then the approach,
 24 various approaches under the column "Approach,
 25 Strengths and Weaknesses". If we go back to

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1 the page before, you'll see Ms. Bonnell
 2 continues on. And that's one of those memos
 3 you were referring to.
 4 MR. TILLEY:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. It's not the July one but this is a more,
 8 presumably, refined one in the sense of more
 9 advanced.
 10 MR. TILLEY:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. As well at that point in time, just go to the
 14 last page of the exhibit--I shouldn't say the
 15 last, it's page 5 of the exhibit. It's
 16 entitled "Key messages process, key messages
 17 ER/PR tests, key messages understanding
 18 immunoperoxidase staining." Next page repeats
 19 all the same. Now this says, if I just go
 20 back to the beginning, I'm sorry,
 21 Commissioner, just going to go back, thank
 22 you. And a drafted letter from QI. So at
 23 this point, this would have been a letter
 24 drafted to go to individual patients?
 25 MR. TILLEY:

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1 A. I'm not sure because I've asked the same
 2 question to myself and I haven't seen that
 3 copy.
 4 COFFEY, Q.C.:
 5 Q. Okay. And now there's no letter attached here
 6 in the material we have here. I'm not saying--
 7 -I don't want to go out on a limb and say we
 8 have never received it, but it's -
 9 MR. TILLEY:
 10 A. We looked at one yesterday.
 11 COFFEY, Q.C.:
 12 Q. Now, there is, if we could go to, please,
 13 Exhibit P-0331, which is another copy from
 14 another--well, it's a copy from a different
 15 source or a different time. If we could go to
 16 page 5 of that, please? Actually, what I'm
 17 going to do if I could, please, go back to
 18 page 2, please, so Mr. Tilley gets some
 19 comfort here.
 20 MR. TILLEY:
 21 A. No, I've got it here.
 22 COFFEY, Q.C.:
 23 Q. Sure, yes.
 24 MR. TILLEY:
 25 A. 03331 (sic.), page 2.

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1 COFFEY, Q.C.:
 2 Q. Page 2 is the communications options.
 3 MR. TILLEY:
 4 A. Right.
 5 COFFEY, Q.C.:
 6 Q. And again, it's dated August 12th, 2005. It's
 7 got the full letterhead on it. And it
 8 appears, at least, very similar to the one we
 9 just looked at, if not identical. The final
 10 page of this, though, and the source of this
 11 is Pat Pilgrim, Tab 16, communications
 12 options. It's on Eastern Health letterhead
 13 and it says, "Dear" blank. And does that
 14 appear to be a draft of a patient letter?
 15 MR. TILLEY:
 16 A. Yes, it refers to "Your tissue was tested," so
 17 -
 18 COFFEY, Q.C.:
 19 Q. Sure.
 20 MR. TILLEY:
 21 A. - clearly.
 22 COFFEY, Q.C.:
 23 Q. So then by August 12th at 3:09 p.m. there were
 24 plans--well, the pros and cons were being laid
 25 out for yourself and Bob Williams in terms of

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1 communications, disclosure by Ms. Bonnell?
 2 MR. TILLEY:
 3 A. Yes, in fact, I specifically remember on that
 4 e-mail having had this bit of a roller coaster
 5 in terms of how we should do this, asking her
 6 to put this memo together for me so that I
 7 could see some of the pros and cons of each
 8 approach.
 9 COFFEY, Q.C.:
 10 Q. Yeah. And the fact that there is such a draft
 11 of a letter I take it--if we could, please,
 12 Commissioner, if we could just look at 0163,
 13 please, P-0163? And again, Mr. Tilley, you
 14 did, in describing this to the Commissioner
 15 earlier, refer to the--you recalled that there
 16 was some contact from the department?
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. I think you attributed it to Moira Hennessey.
 21 She is carboned on this. The e-mail is August
 22 9th, 2005, 10:08 a.m. from John Abbott to Bob
 23 Williams. And it's "Just checking in to see
 24 if the letters to the patients respecting
 25 retesting of negative ER/PR test results are

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1 being sent. Please advise me. Meanwhile,
 2 thanks for your continued assistance, advice
 3 in this matter."
 4 MR. TILLEY:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. So it suggests that as of August 9th the
 8 department's DM certainly thought the letters
 9 are being sent?
 10 MR. TILLEY:
 11 A. Yes. Though, the telephone log of the date
 12 from Moira Hennessey asking about letters, I'm
 13 not sure -
 14 COFFEY, Q.C.:
 15 Q. And she may have followed up on this
 16 afterward. I'm not -
 17 MR. TILLEY:
 18 A. I'm thinking it might have been before, that's
 19 why I reference it.
 20 COFFEY, Q.C.:
 21 Q. Sure. Yeah, and I appreciate that.
 22 MR. TILLEY:
 23 A. Okay.
 24 COFFEY, Q.C.:
 25 Q. What I'm getting at is this, is that certainly

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1 confirms your understanding the department was
 2 asking.
 3 MR. TILLEY:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. Whether it was Moira or John or both.
 7 MR. TILLEY:
 8 A. Right. And I think you'll find in my
 9 handwritten notes there was always a reference
 10 to the letter.
 11 COFFEY, Q.C.:
 12 Q. Sure.
 13 MR. TILLEY:
 14 A. And getting a clarification on that.
 15 COFFEY, Q.C.:
 16 Q. Yeah. So what I'm--it's your recollection is
 17 it, then, that the letter was a live issue in
 18 the beginning of August?
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And to the extent that by the 12th certainly a
 23 graph existed along with a memo about the
 24 strengths and weaknesses of different
 25 approaches?

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1 MR. TILLEY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And then the meeting of August 15th occur with
 5 the minister and Dr. Laing and you follow the
 6 oncologists' approach?
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Okay. Now, at that point, I take it, though,
 11 you would have been--you, yourself and the
 12 minister and the deputy minister would have
 13 been, and Dr. Williams, for that matter, would
 14 have been acutely aware that this could go
 15 public at any time?
 16 MR. TILLEY:
 17 A. That's correct.
 18 COFFEY, Q.C.:
 19 Q. Was there any plan in place, actual plan,
 20 communications plan in place, requisitioned,
 21 asked for as to what will happen if it appears
 22 in the news tomorrow morning?
 23 MR. TILLEY:
 24 A. Well the intent would be that Dr. Williams
 25 would respond, we would be open and honest in

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1 terms of what we are dealing with. The key
 2 messages referred in this document, I guess,
 3 would have been the basis to help prepare for
 4 what questions might arise.
 5 COFFEY, Q.C.:
 6 Q. So it was your understanding that as of the
 7 middle of August or toward the middle of
 8 August Dr. Williams would have been--had
 9 already been identified as the spokesperson if
 10 it went public?
 11 MR. TILLEY:
 12 A. Yes, that would -
 13 COFFEY, Q.C.:
 14 Q. And these were effectively his key messages or
 15 speaking points?
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Sir, if you could--do you know if--because I
 20 take it by then certainly Mount Sinai had been
 21 recruited to conduct the current testing and
 22 the retests?
 23 MR. TILLEY:
 24 A. Yes, I think that was happening in July.
 25 COFFEY, Q.C.:

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1 Q. Yes. When did you first become aware that the
 2 results were going to be delayed? I'll go
 3 back a bit. When Mount Sinai was talked about
 4 and then it was decided to go with Mount
 5 Sinai, who was it that told you the time
 6 frame?
 7 MR. TILLEY:
 8 A. I say with a fair degree of confidence it
 9 would have been Dr. Cook.
 10 COFFEY, Q.C.:
 11 Q. And the time frame was four to six weeks, I
 12 believe, or six to eight weeks?
 13 MR. TILLEY:
 14 A. Well, yeah, there was a couple of weeks to
 15 prepare and then four to six to get it back,
 16 so I think I was always working on the
 17 understanding it was six to eight weeks.
 18 COFFEY, Q.C.:
 19 Q. And that was the results for whom, Eastern
 20 Health's results?
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. Because in the meantime -
 25 MR. TILLEY:

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1 A. Right.
 2 COFFEY, Q.C.:
 3 Q. What was your understanding in the meantime as
 4 to what the status of the other, most of the
 5 rest of--well, the other half of the
 6 population?
 7 MR. TILLEY:
 8 A. Well, we were still waiting to get information
 9 from them is my recollection.
 10 COFFEY, Q.C.:
 11 Q. Do you know if, in fact, they had even been
 12 contacted about anything other than the 2002?
 13 MR. TILLEY:
 14 A. I can't say yes or no to that.
 15 COFFEY, Q.C.:
 16 Q. Who was in charge of coordinating that?
 17 MR. TILLEY:
 18 A. It would have been, I presume, Dr. Cook.
 19 COFFEY, Q.C.:
 20 Q. Now, the recruiting of these two outside
 21 individuals -
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. - Banerjee and Wegrynowski, as it turns out

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1 they're the two individuals, whose idea was
 2 that, do you know?
 3 MR. TILLEY:
 4 A. To have an external review done, I'm thinking
 5 it was Dr. Williams.
 6 COFFEY, Q.C.:
 7 Q. Okay. And your understanding they were a peer
 8 review, you first garnered that when?
 9 MR. TILLEY:
 10 A. Fairly early in the process, I would expect.
 11 COFFEY, Q.C.:
 12 Q. And as a peer review you would have
 13 understood, I take it, that the physicians
 14 whose work was being reviewed or the
 15 technologists whose work was being reviewed
 16 would, under the policy, be entitled to
 17 actually see a copy of it?
 18 MR. TILLEY:
 19 A. Certainly -
 20 COFFEY, Q.C.:
 21 Q. Would you have understood that?
 22 MR. TILLEY:
 23 A. No. The understanding in terms of sharing it
 24 with the individuals personally, certainly if
 25 we had gotten ourselves into the medical staff

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1 bylaws where there was disciplinary action
 2 originated from it, then they would certainly
 3 have been entitled to that. But I would have
 4 expected the clinical chief to be discussing
 5 the findings with his pathologists.
 6 COFFEY, Q.C.:
 7 Q. Had you assumed throughout this whole scenario
 8 that that had happened?
 9 MR. TILLEY:
 10 A. I can't say I gave thought to it, Mr. Coffey.
 11 COFFEY, Q.C.:
 12 Q. I take it then that -- if we can look at P-
 13 085, please. This is an e-mail from yourself,
 14 Friday, September 30th at 4:19 p.m. to the
 15 members of the Board of Trustees, and you
 16 indicate to them, "You will recall a briefing
 17 that was provided by Dr. Williams at the Board
 18 of Trustees meeting in Marystown pertaining to
 19 the estrogen and progesterone receptors. Just
 20 to inform you that we have responded today to
 21 some media inquiries regarding this issue, so
 22 you may see reference to it over the next
 23 couple of days". It take it by then, and I
 24 think Ms. Dawe has told us it was just several
 25 days before this, or within a week or so

1 before September 30th that --

2 MR. TILLEY:

3 A. The 23rd of September would have been the

4 Board meeting.

5 COFFEY, Q.C.:

6 Q. A week before. So the earlier Friday, Friday

7 before the Board would have been briefed.

8 MR. TILLEY:

9 A. Okay.

10 COFFEY, Q.C.:

11 Q. Do you recall what it was, or what the overall

12 message was that Dr. Williams gave the Board?

13 I mean, you would have sat through his

14 briefing.

15 MR. TILLEY:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. What was your -- in terms of the cause of the

19 problem?

20 MR. TILLEY:

21 A. Well, I certainly recall Dr. Williams speaking

22 at length, and he probably had the floor for

23 half an hour to 45 minutes. He's very

24 extensive in terms of his information flow.

25 In the documentation leading up to this, we

1 Q. Feedback from the external reviewers?

2 MR. TILLEY:

3 A. Yeah, yeah, and, you know, I'm sure there were

4 questions from the Board. I can't say what

5 they were or who they were from, but that was

6 Dr. Williams giving them an overview of what

7 we were dealing with her.

8 COFFEY, Q.C.:

9 Q. Okay. Now the -- Ms. Dawe has testified here

10 that she was always -- beginning then,

11 beginning back -- well, really certainly

12 beginning at the latest with this briefing by

13 Dr. Williams, and subsequently, that she was

14 under the understanding or impression always

15 that it was the problem or the change in

16 results was simply attributable to, or

17 largely, not entirely, attributable to the

18 change from one platform to another, one

19 machine to another. That's what she said,

20 okay. She told the Commissioner that.

21 MR. TILLEY:

22 A. Okay.

23 COFFEY, Q.C.:

24 Q. Is there anything in what Dr. Williams said to

25 the Board that you can recall that would have

1 had seen several e-mails by now with regards

2 to briefing notes, so I would have expected

3 that he would have used that type of

4 information. I'm thinking by now we would

5 have had -- I'm not sure where the external

6 reviews were, whether they were completed or -

7 - and briefing.

8 COFFEY, Q.C.:

9 Q. Debriefing.

10 MR. TILLEY:

11 A. Debriefing.

12 COFFEY, Q.C.:

13 Q. Well, it's hard to know whether Ms.

14 Wegrynowski's would have been debriefed by

15 that day or not.

16 MR. TILLEY:

17 A. Okay.

18 COFFEY, Q.C.:

19 Q. I mean, in the sense -- I should say it's hard

20 to know.

21 MR. TILLEY:

22 A. My recollection is that he spoke to some of

23 the feedback that would have been there at the

24 time.

25 COFFEY, Q.C.:

1 from your perspective led her to that

2 conclusion, because she says she was never

3 disabused of it --

4 MR. TILLEY:

5 A. Okay.

6 COFFEY, Q.C.:

7 Q. Until she read Banerjee's report this year.

8 MR. TILLEY:

9 A. Oh! Well, can we pull up my note because I do

10 have some notes of the Board meeting.

11 COFFEY, Q.C.:

12 Q. Okay.

13 MR. TILLEY:

14 A. I don't know if that might help me.

15 COFFEY, Q.C.:

16 Q. Let me see now. If I could, Commissioner, I'd

17 like to do that after lunch.

18 THE COMMISSIONER:

19 Q. Sure, if you want to do that after lunch.

20 We'll come back to it when --

21 COFFEY, Q.C.:

22 Q. I certainly well come back to that. Going

23 public, like, that day, that Friday --

24 MR. TILLEY:

25 A. In September.

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1 COFFEY, Q.C.:

2 Q. September 30th. What do you recall about

3 that? How did you first learn that this is

4 going to be -- get into the media?

5 MR. TILLEY:

6 A. How, I don't recall.

7 COFFEY, Q.C.:

8 Q. Okay.

9 MR. TILLEY:

10 A. Unless I had a chance to bore through this,

11 but I'm guessing contact would have gone to

12 Susan, and that's where I would have expected

13 to have heard the results or the contact about

14 or from.

15 COFFEY, Q.C.:

16 Q. So Susan calls or e-mails you to tell you that

17 she's been contacted by the media?

18 MR. TILLEY:

19 A. That would be my assumption.

20 COFFEY, Q.C.:

21 Q. Did you get involved in it, in the sense of

22 how are we going to respond to this, who is

23 going to be involved?

24 MR. TILLEY:

25 A. Other than to say that Dr. Williams would be

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1 the spokesperson for this, that was always her

2 understanding. I do remember her talking to

3 the reporter something to the effect -- well,

4 initially it came in as a mammography issue or

5 a breast screening issue, and it was clear

6 that that was not the understanding or that

7 was not the issue. It was a misunderstanding

8 on the media's part.

9 COFFEY, Q.C.:

10 Q. Although, if I could, the documentation that

11 is before the Commission is replete with

12 references to screening, isn't it, it's

13 mislabelled routinely?

14 MR. TILLEY:

15 A. I've seen it in the Board Minutes that Mr.

16 Simmons showed me last week, and it did blow

17 me away to see it there because it's clearly

18 an inaccuracy.

19 COFFEY, Q.C.:

20 Q. Sure.

21 MR. TILLEY:

22 A. I don't know if it --

23 COFFEY, Q.C.:

24 Q. To be fair to the media, in terms of that,

25 they weren't the only ones who were improperly

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1 using the word "screening"?

2 MR. TILLEY:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. And this was just an initial inquiry by them?

6 MR. TILLEY:

7 A. Yes, and the only reference I saw to breast

8 screening was in the title in the Board

9 minute.

10 COFFEY, Q.C.:

11 Q. Sure.

12 MR. TILLEY:

13 A. In any event -- so it came in as an inaccurate

14 issue. I just remember some reference to

15 Susan talking about this and the process of

16 notifying the patients and our effort to try

17 to get the patients followed up on before it

18 came to the media, and I remember the

19 reference to her attempting to try to convince

20 the media to say, look, can you hold off on

21 this because we're trying to do this being

22 respectful of the patient.

23 COFFEY, Q.C.:

24 Q. Now hold off, what was being envisaged at that

25 point? What did you understand she envisaged

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1 happening?

2 MR. TILLEY:

3 A. Well, what I interpreted is that they wouldn't

4 do the story.

5 COFFEY, Q.C.:

6 Q. Like, period, at that point --

7 MR. TILLEY:

8 A. At that point. No doubt it was going to become

9 a story, but --

10 COFFEY, Q.C.:

11 Q. She couldn't dissuade them?

12 MR. TILLEY:

13 A. Nor did I expect her to, to be quite frank.

14 COFFEY, Q.C.:

15 Q. Go ahead.

16 MR. TILLEY:

17 A. I can't remember because I haven't looked at

18 that article, you know, in a long time to know

19 the answer to it, but I'm not sure if Dr.

20 Williams was actually referenced in that

21 article or not. He wasn't? So it was Susan

22 giving them information then.

23 COFFEY, Q.C.:

24 Q. This is P-086, if it will assist.

25 MR. TILLEY:

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1 A. Okay.
 2 COFFEY, Q.C.:
 3 Q. If you need, we can scale it up to another
 4 size.
 5 MR. TILLEY:
 6 A. I think I can get that.
 7 COFFEY, Q.C.:
 8 Q. Okay. So it's not Dr. Laing -- I'm sorry,
 9 it's not Dr. Williams. In fact, it's Dr.
 10 Laing and Susan Bonnell who are quoted.
 11 MR. TILLEY:
 12 A. Oh, okay, yes.
 13 COFFEY, Q.C.:
 14 Q. Were you made aware that Dr. Laing was going
 15 to be the physician spokesperson?
 16 MR. TILLEY:
 17 A. I can't recall one way or the other. It
 18 doesn't come back to me.
 19 COFFEY, Q.C.:
 20 Q. Was any thought ever given to having you be
 21 the spokesperson?
 22 MR. TILLEY:
 23 A. Not in my mind.
 24 COFFEY, Q.C.:
 25 Q. Why is that?

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1 MR. TILLEY:
 2 A. Well, I'd been over the years getting an
 3 appreciation for the abilities where CEOs can
 4 be effective and the abilities where
 5 physicians can be effective, and on this
 6 particular issue, as you've clearly gleaned
 7 from me, my ability to understand the
 8 intricacies of this particular test is very
 9 limited, and I felt it was appropriate to have
 10 a physician speak to it.
 11 COFFEY, Q.C.:
 12 Q. And Susan Bonnell, though, is not a physician.
 13 MR. TILLEY:
 14 A. No.
 15 COFFEY, Q.C.:
 16 Q. Why would she be --
 17 MR. TILLEY:
 18 A. Did you say she's referenced there in addition
 19 to Dr. Laing?
 20 COFFEY, Q.C.:
 21 Q. Well, if you look in the first page, seventh
 22 paragraph.
 23 MR. TILLEY:
 24 A. Yes, okay.
 25 COFFEY, Q.C.:

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1 Q. Spokeswoman for the Health Care Corporation.
 2 MR. TILLEY:
 3 A. Uh-hm.
 4 COFFEY, Q.C.:
 5 Q. It says, "A new more accurate piece of
 6 equipment was installed in the laboratory last
 7 year providing clear results and current
 8 hormone receptor tests are also being double
 9 checked as part of the quality review. She
 10 adds that retesting is not impacting patients,
 11 waiting for other laboratory results".
 12 MR. TILLEY:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. And, in fact, there's a quote then attributed
 16 about redoing past tests and so on. So can
 17 you explain then why she would be there?
 18 MR. TILLEY:
 19 A. No, other than the media contacted her and she
 20 got into a discussion about this and indicated
 21 that we needed somebody with more expertise.
 22 COFFEY, Q.C.:
 23 Q. So Dr. Laing was the -- do you know how she
 24 was identified? I mean, were you involved in
 25 any of this at all?

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1 MR. TILLEY:
 2 A. I don't recall specifically being identified.
 3 COFFEY, Q.C.:
 4 Q. Not that you were identified, but were you
 5 involved in any kind of decision as to who
 6 would respond, how we would respond, who the
 7 spokesperson would be? Were you actually
 8 involved that day?
 9 MR. TILLEY:
 10 A. I can't recall that day other than the fact
 11 that when the time would come when we would
 12 get a media call like this, the intent was to
 13 speak opening about the situation. So I can't
 14 recall anything on this particular day.
 15 COFFEY, Q.C.:
 16 Q. You can't even recall being consulted about
 17 it, about how we should respond that day? I'm
 18 just asking.
 19 MR. TILLEY:
 20 A. All I can say is that here we are running a
 21 billion dollar organization and things are
 22 happening all over the place, so if it
 23 happened, I can honestly say I don't recall,
 24 but there's certainly -- the context here is a
 25 very busy office environment.

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1 COFFEY, Q.C.:

2 Q. So you're saying it's quite possible then you

3 --it was made known to you that day that this

4 was happening, and you say, well, you'd leave

5 it to Susan Bonnell and Bob Williams to deal

6 with. Is that right at all?

7 MR. TILLEY:

8 A. You could almost make a similar statement

9 about anything for any day that I've been in

10 that job and it could have happened. That's

11 why I tended to keep notes a lot.

12 COFFEY, Q.C.:

13 Q. So, is that a yes, that I chose that day

14 because of whatever else was going on in your

15 office that you decided to leave it to Susan

16 and -

17 MR. TILLEY:

18 A. No, I sincerely don't recall.

19 COFFEY, Q.C.:

20 Q. Okay. Now, in terms of being--you said the

21 plan all along was to open, okay?

22 MR. TILLEY:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. Of course, when this was going public that

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1 day, individuals patients, other than the

2 original 12 out of 16 back in the summer, no

3 one else had been notified.

4 MR. TILLEY:

5 A. Right.

6 COFFEY, Q.C.:

7 Q. At least that was your understanding.

8 MR. TILLEY:

9 A. Right.

10 COFFEY, Q.C.:

11 Q. Okay. Were any tissue samples or test rests--

12 not tissue samples--any retest results back

13 from Mt. Sinai as of September 30?

14 MR. TILLEY:

15 A. I'm thinking yes.

16 COFFEY, Q.C.:

17 Q. Okay. You have a good memory.

18 MR. TILLEY:

19 A. Thank you.

20 COFFEY, Q.C.:

21 Q. That was borne out.

22 MR. TILLEY:

23 A. It's good to guess.

24 COFFEY, Q.C.:

25 Q. That there--the first wave, as it were -

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1 MR. TILLEY:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. - and come back, but just before that.

5 MR. TILLEY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. Now sir, with respect to oneness, what was the

9 plan in terms of, you know, contacting

10 individual patients? I mean, this is gone

11 public, you know. People--on October 2,

12 anybody who bought The Independent or had

13 access to it became aware of it and certainly

14 by October 3 all the other media organizations

15 in this city, if not in Newfoundland, were on

16 this story. Was there any plan in place at

17 that point to contact individual patients?

18 MR. TILLEY:

19 A. In terms of those where the results had been

20 back?

21 COFFEY, Q.C.:

22 Q. No, not even results -

23 MR. TILLEY:

24 A. Okay, those that were -

25 COFFEY, Q.C.:

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1 Q. About the fact that they are one of those

2 being retested.

3 MR. TILLEY:

4 A. Yeah, not at that point.

5 COFFEY, Q.C.:

6 Q. Can you tell the Commissioner why not? Any

7 thought being given to it?

8 MR. TILLEY:

9 A. Yes, I'm sure thought had been given to it

10 because even in thinking, one of Susan

11 Bonnell's e-mails to me, it had referenced the

12 possibility of a pre-contact.

13 COFFEY, Q.C.:

14 Q. And the department had been talking about it?

15 MR. TILLEY:

16 A. In a letter, yes. You know, we were still

17 working on the decision that we had made back

18 in August that was very much influenced by the

19 oncologists. By that time the issue obviously

20 was talked about and subsequently, changed mid

21 October sometime, I believe, was it?

22 COFFEY, Q.C.:

23 Q. Yes, that changed after, it did, yes. Your

24 memory is good on that. But in terms of that,

25 I take it then that although it had gone so

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1 far as the department's suggestion, drafted a
 2 letter which existed by the middle of August,
 3 a generic letter to the patients, do you know
 4 if, in fact, the patients addresses had been
 5 identified?
 6 MR. TILLEY:
 7 A. I wouldn't be able to speak to that part.
 8 COFFEY, Q.C.:
 9 Q. That though could be done, I take it, at
 10 least, their last known address could have
 11 been identified.
 12 MR. TILLEY:
 13 A. I would assume so.
 14 COFFEY, Q.C.:
 15 Q. So you don't know whether or not even if it
 16 had gotten that far?
 17 MR. TILLEY:
 18 A. No, I can't speak to it.
 19 COFFEY, Q.C.:
 20 Q. A mailing list as it were. No. So, I take it
 21 then that the plan was, as of mid August, if
 22 this leaks out before the retest results are
 23 back, then we will put forward Dr. Williams as
 24 a spokesperson to be open with the public, -
 25 MR. TILLEY:

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1 A. yes.
 2 COFFEY, Q.C.:
 3 Q. - but in the meantime, you won't be contacting
 4 individual patients and when it breaks we will
 5 have no plan in place to actually contact
 6 individual patients on mass.
 7 MR. TILLEY:
 8 A. I can't speak to the latter.
 9 COFFEY, Q.C.:
 10 Q. Was there any such on mass plan that you were
 11 aware of?
 12 MR. TILLEY:
 13 A. There's not been a document that I'm aware of.
 14 COFFEY, Q.C.:
 15 Q. Okay. Now, in terms of that issue of oneness.
 16 If we could just go back to--I'll just pick
 17 the clearer one in a typing sense. Exhibit P-
 18 0331, page 4. Now, Mr. Tilley, this
 19 apparently is a draft presumably a considered
 20 draft, considerable thought gone into it, of
 21 key messages, on proceeded key message on
 22 ER/PR tests and key message on understanding
 23 immunoperoxidase staining. Do you see that?
 24 MR. TILLEY:
 25 A. Uh-hm.

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1 COFFEY, Q.C.:
 2 Q. Was any thought given to Eastern Health simply
 3 publishing this? When this was going public,
 4 why not just simply publish it? Put it up on
 5 your website, publish it--that's open, isn't
 6 it?
 7 MR. TILLEY:
 8 A. Good question, Mr. Coffey, I don't recall that
 9 issue being discussed.
 10 COFFEY, Q.C.:
 11 Q. It certainly would be open, wouldn't it?
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And if they are key message, I'm going to
 16 suggest to you, in fact, somebody like Dr.
 17 Williams presumably would have been prepared
 18 to announce any one or more of them.
 19 MR. TILLEY:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. So, there'd be nothing, I gather, no real
 23 problem with just simply publishing it too, as
 24 well as announcing it, but publishing it.
 25 It makes it fairly easy to follow, doesn't it?

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1 MR. TILLEY:
 2 A. That's the idea of having it presented this
 3 way.
 4 COFFEY, Q.C.:
 5 Q. Yes.
 6 THE COMMISSIONER:
 7 Q. Mr. Coffey, if you could find a convenient
 8 spot, we'll break.
 9 COFFEY, Q.C.:
 10 Q. Thank you, Commissioner. Right now will be
 11 fine.
 12 THE COMMISSIONER:
 13 Q. Okay. Break for lunch until 2:00.
 14 (BREAK FOR LUNCH)
 15 THE COMMISSIONER:
 16 Q. Please be seated. Mr. Coffey.
 17 COFFEY, Q.C.:
 18 Q. Thank you, Commissioner. Now, Mr. Tilley,
 19 just before lunch you had referenced the board
 20 of trustee's meeting in September and you had
 21 notes on it. P-0338, page 1. If you could
 22 just--do you have that there in front of you?
 23 MR. TILLEY:
 24 A. I do, sir, yes.
 25 COFFEY, Q.C.:

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1 Q. You do. Is that the -
 2 MR. TILLEY:
 3 A. Yes, that's the ones I'm thinking of.
 4 COFFEY, Q.C.:
 5 Q. Okay. So it actually was September 21st,
 6 according to the note?
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Right? And that's a Wednesday as opposed to
 11 the 23rd. There would have been just the one
 12 meeting that September, I take it?
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Yeah. And if we could, please, go on to page
 17 2 of the exhibit? ER/PR and you say you
 18 wanted to or would have found the notes
 19 helpful in trying to recall what Dr. Williams
 20 had to say to the board?
 21 MR. TILLEY:
 22 A. Right.
 23 COFFEY, Q.C.:
 24 Q. Particularly in relation to external
 25 reviewers' findings?

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1 MR. TILLEY:
 2 A. That's a part of it, yes.
 3 COFFEY, Q.C.:
 4 Q. Is there anything there to assist you there in
 5 that regard?
 6 MR. TILLEY:
 7 A. Well, this, of course, would have been my
 8 notes that were taken as a part of Dr.
 9 Williams' presentation to the board. And I
 10 guess it's self evident what those issues are.
 11 I'm sorry, I'm trying to use my little mouse
 12 here.
 13 COFFEY, Q.C.:
 14 Q. Go ahead. Looking at those, what are they?
 15 MR. TILLEY:
 16 A. Sorry, would you like me to read it?
 17 COFFEY, Q.C.:
 18 Q. Sure, well, in terms if that might help.
 19 MR. TILLEY:
 20 A. Okay. So there was discussion about pre '97
 21 and the biochemical method and then the
 22 immunohistochemical staining process. Tests
 23 were very sensitive, specifically, "If low,
 24 boil specimen for 20 minutes to separate."
 25 Something "control simultaneous," a "run

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1 control simultaneous", I would think.
 2 "Literature, Europe, margin of error, new
 3 technology, 2004. Peers question positivity
 4 rate, 70 to 80 percent. Definition of
 5 positives vary." I'm not sure if that speaks
 6 to the test or the actual treatment
 7 parameters. Newfoundland, 73 percent since
 8 '97, though some years looked like potential
 9 problems. Change in therapy." I guess that's
 10 in relation to the thresholds. "Conversions
 11 from negative to positive. The manufacturer
 12 okay." So I'm assuming that's the Ventana
 13 system. "Independent review, Cancer, B.C.
 14 Institute." "December" there for some reason.
 15 And "Mount Sinai tech."
 16 COFFEY, Q.C.:
 17 Q. Could that be December or could it be doc?
 18 MR. TILLEY:
 19 A. Sorry, sir, you're right. Then "Repeat
 20 testing." And then it goes into the doctor's
 21 report, so obviously there was references
 22 there to what he had said. My note says,
 23 "Stains are comparable to other parts of
 24 Canada and superior to others." Talks about
 25 the sensitivity of the tests, talks about

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1 reducing the number of pathologists handling
 2 and recording and suggests that all specimens
 3 be read in St. John's. The chief tech, it
 4 must have been something available to him to
 5 speak to. "Specimens poor fixated. Stopped
 6 testing. Patients who have converted so far
 7 have been followed up, followed. "Montreal,
 8 McGill, seven patients confirmed with St.
 9 John's rates. Some conversations." That's
 10 what's partly struck out. Let's see, on the
 11 angle it says, "Reviews, percent rate,
 12 conversions, literature, no national
 13 standard." With "Conversions" it says,
 14 "sensitivity," that arrow going down to the
 15 left.
 16 COFFEY, Q.C.:
 17 Q. Yes.
 18 MR. TILLEY:
 19 A. "Changes," in the second sort of mid section
 20 there it says, "Follow-up extensive.
 21 Independent patient follow-up" and an arrow
 22 down to "Confidentiality." And over in the
 23 last block there's reference to Mount Sinai.
 24 And then it gets into other issues.
 25 COFFEY, Q.C.:

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1 Q. Okay. Now, sir, so just looking at the issue
 2 of or dealing with the issue of whether or not
 3 Dr. Williams conveyed the findings, general
 4 findings of these external reviewers to the
 5 board at the time, which is the context in
 6 which I asked you the question, could you just
 7 scroll down, please, the page?
 8 MR. TILLEY:
 9 A. Keep going?
 10 COFFEY, Q.C.:
 11 Q. Yes. Right there in "Doctor's report," I
 12 presume, is referring to what you now know to
 13 be Dr. Banerjee?
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. As you say. And "Stains are comparable to
 18 other parts of Canada and superior to others"
 19 and "sensitivity of tests." Now, I appreciate
 20 that at the time of this briefing of the
 21 board, September 21st, Dr. Williams would not
 22 have received that October 17th report?
 23 MR. TILLEY:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. I took you through at least a portion of that
 2 report yesterday?
 3 MR. TILLEY:
 4 A. You did.
 5 COFFEY, Q.C.:
 6 Q. And looking back even on your original review
 7 of it in Dr. Williams' office some years ago,
 8 do you recall any suggestion that stains are
 9 comparable to other parts of Canada and
 10 superior to others?
 11 MR. TILLEY:
 12 A. That certainly wasn't referenced in what we
 13 read yesterday.
 14 COFFEY, Q.C.:
 15 Q. Yes. Now, in terms of that, might that be
 16 referring to the current staining with the
 17 Ventana machine or do you know?
 18 MR. TILLEY:
 19 A. I'd be speculating.
 20 COFFEY, Q.C.:
 21 Q. You wouldn't, okay, you wouldn't, wouldn't
 22 know. And in terms of the chief tech there,
 23 there's two question marks after the "poorly
 24 fixated" in quotes?
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Do you recall why you had the two question
 4 marks?
 5 MR. TILLEY:
 6 A. No, I don't.
 7 COFFEY, Q.C.:
 8 Q. Had up to that point in time, which is
 9 September 21st, '05, did anybody explain to
 10 you what fixation was in a general way?
 11 MR. TILLEY:
 12 A. I don't recall and that could explain why the
 13 question mark was there, for me to go back and
 14 look.
 15 COFFEY, Q.C.:
 16 Q. At the time would you have had the
 17 understanding that if Dr. Williams is telling
 18 you and the trustees that the chief
 19 technologist from Mount Sinai apparently had
 20 come to, or was expressing the view that the
 21 specimens were poorly fixated?
 22 MR. TILLEY:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. That that would not be a good thing?

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1 MR. TILLEY:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. You would have understood that?
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Do you know if anyone--if at the time Dr.
 9 Williams explained to the trustees, you know,
 10 what the implications of poor fixation were,
 11 and what did that--like, do you recall if he
 12 explained what that means?
 13 MR. TILLEY:
 14 A. I don't have any recollection.
 15 COFFEY, Q.C.:
 16 Q. Okay, fair enough.
 17 MR. TILLEY:
 18 A. Other than to say that I was able to read
 19 these notes, obviously, in less than a minute,
 20 but he did speak for quite some time, so I'm
 21 only capturing a piece of what he said.
 22 COFFEY, Q.C.:
 23 Q. Sure. And you weren't purporting to be
 24 transcribing?
 25 MR. TILLEY:

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1 A. No. This is only for my benefit.
 2 COFFEY, Q.C.:
 3 Q. Was any thought given to giving the board
 4 anything in writing at the time such as, for
 5 example, those key, that page of key messages?
 6 MR. TILLEY:
 7 A. Well, we typically do an executive report to
 8 the board simultaneous with the board
 9 packages, and we did have a small blurb, so to
 10 speak, in that. Normally would have asked Dr.
 11 Williams to do that. But those things are not
 12 made to be or intended to be briefing
 13 documents, they're meant to be short snippets
 14 of issues. And I'm not sure, but I'm thinking
 15 on that one it might have referenced that
 16 further information would be provided to
 17 boards.
 18 COFFEY, Q.C.:
 19 Q. Yes. But in terms of like showing up at the
 20 board meeting and looking back on it when
 21 you're dealing with a technical issue, and I
 22 appreciate you wouldn't be able to explain to
 23 a bunch of what I'll call civilians in that
 24 world, the niceties of ER/PR in 20 minutes or
 25 less.

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1 MR. TILLEY:
 2 A. Well, I would say in half an hour or -
 3 COFFEY, Q.C.:
 4 Q. Or even more, whatever, yeah. But the idea
 5 of, for example, having kind of a written
 6 summary such as you had prepared at least for
 7 him to outline for the media, speaking points?
 8 MR. TILLEY:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. I take it now if you had to do it again in a
 12 similar sort of situation so that they had
 13 something to look at in front of them and
 14 follow through?
 15 MR. TILLEY:
 16 A. Well, my recollection is that Dr. Williams,
 17 you know, was able to deal with it very
 18 slowly. Now, having the benefit of a visual
 19 to refer to that could, in fact, have been an
 20 opportunity.
 21 COFFEY, Q.C.:
 22 Q. Yeah. In fact, you yourself, for example,
 23 when you're giving a presentation, at least in
 24 times in the past you've used power point?
 25 MR. TILLEY:

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1 A. Occasionally.
 2 COFFEY, Q.C.:
 3 Q. On occasion, yes.
 4 MR. TILLEY:
 5 A. Or a short note in my pocket.
 6 COFFEY, Q.C.:
 7 Q. Sure. Now, with respect to this poorly
 8 fixated issue, as you question it, did you
 9 ever speak to Dr. Williams afterward about,
 10 well, what does that mean and what are the
 11 implications?
 12 MR. TILLEY:
 13 A. I can't recall specifically.
 14 COFFEY, Q.C.:
 15 Q. Do you know if--I'll try, and this may or may
 16 not help you, the idea that fixation, I think
 17 you may have already referred to this,
 18 fixation begins with the surgery?
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Up in the OR or down in the OR and -
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. In terms of preservation of tissue, you know,
 2 intact?
 3 MR. TILLEY:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. Begins there, extends all the way from the
 7 lab, all the way back to there?
 8 MR. TILLEY:
 9 A. Yes. Yes, it's ringing a bell.
 10 COFFEY, Q.C.:
 11 Q. Yes, in fact, you were telling the
 12 Commissioner about it?
 13 MR. TILLEY:
 14 A. Right, yes.
 15 COFFEY, Q.C.:
 16 Q. And the idea that that might then have, if a
 17 technologist from Ontario, from Mount Sinai,
 18 was saying specimens are poorly fixated, that
 19 that would have potentially implications not
 20 only for the lab so much as for all the way
 21 back up through the system?
 22 MR. TILLEY:
 23 A. Um-hm.
 24 COFFEY, Q.C.:
 25 Q. Do you recall that being discussed within

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1 Eastern Health at the time?
 2 MR. TILLEY:
 3 A. Yes, I do recall it being discussed and
 4 discussed in the context of their being no
 5 standards for how these things are supposed to
 6 be kept post surgery and then in transport to
 7 the lab, that rings a bell.
 8 COFFEY, Q.C.:
 9 Q. Yeah. And whether there are kind of national
 10 standards or otherwise, certainly the idea
 11 that I take it, you understood that it could
 12 be done better locally?
 13 MR. TILLEY:
 14 A. Well, I'm sure the chief tech, I'm recalling
 15 that she was referring to standards that were
 16 now available in the accreditation process in
 17 Ontario and in the United States.
 18 COFFEY, Q.C.:
 19 Q. Yes.
 20 MR. TILLEY:
 21 A. So based upon that -
 22 COFFEY, Q.C.:
 23 Q. Are you suggesting that there perhaps were
 24 some standards?
 25 MR. TILLEY:

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1 A. Yes. But not that anything had been
 2 applicable for Canada, to my knowledge, other
 3 than in Ontario.
 4 COFFEY, Q.C.:
 5 Q. Now do you recall if any of the Board of
 6 Trustees reaction to Dr. Williams
 7 presentation, what was it?
 8 MR. TILLEY:
 9 A. I think they were concerned. I'm not
 10 recalling any specific questions that the
 11 Board might have raised. We obviously got
 12 into some discussions about the follow up to
 13 the patients as well. I remember that meeting
 14 was located in Burin.
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 MR. TILLEY:
 18 A. So Dr. Williams was basically given the floor
 19 and spoke on that issue.
 20 COFFEY, Q.C.:
 21 Q. And in term of, though -- the Board itself
 22 expressed concern, or various members
 23 expressed concern, but they left it to
 24 yourself as the CEO to deal with?
 25 MR. TILLEY:

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1 A. Well, concern in regards to this is a big
 2 issue and it certainly needs to be dealt with.
 3 COFFEY, Q.C.:
 4 Q. Did they -- did any of them -- was there any
 5 dissent with the approach that had been taken
 6 so far or was planned to be taken which had
 7 been conveyed to them, the approach that was
 8 going -- was there any dissent by any of the
 9 Board of Trustees?
 10 MR. TILLEY:
 11 A. I don't recall any.
 12 COFFEY, Q.C.:
 13 Q. I take it there was no direction given by
 14 them, by the Board?
 15 MR. TILLEY:
 16 A. The Board minutes, if there's specific
 17 direction, I would think it would be there in
 18 that.
 19 COFFEY, Q.C.:
 20 Q. You certainly don't recall any?
 21 MR. TILLEY:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. In terms of -- so certainly at the time the
 25 peer reviewers were certain of their, you

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1 know, expressions of opinion, professional
 2 opinion, it was thought appropriate or
 3 inappropriate to share that with Board
 4 members, the fact that the chief technologist
 5 had apparently had said, at least verbally,
 6 you know, she had found specimens poorly
 7 fixated, there was no concern about telling
 8 the Board members that?
 9 MR. TILLEY:
 10 A. I considered the Board members as a
 11 confidential group, and certainly wouldn't
 12 have any hesitation sharing that.
 13 COFFEY, Q.C.:
 14 Q. And the same way with the doctor's report,
 15 noted here, "Stains are comparable with other
 16 parts of Canada and superior to others". I
 17 take it, whether the opinion is good or bad
 18 news, it's confidential.
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. So again --
 23 MR. TILLEY:
 24 A. I wouldn't have any concerns with sharing that
 25 information with the Board.

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1 COFFEY, Q.C.:

2 Q. And when the reports did come in, one in

3 October and one in November, those reports had

4 very limited circulation, didn't they?

5 MR. TILLEY:

6 A. They did.

7 COFFEY, Q.C.:

8 Q. And why is that?

9 MR. TILLEY:

10 A. Well, it was all premised around the fact they

11 were peer review documents and the --

12 COFFEY, Q.C.:

13 Q. But you're sharing this with 18 other people

14 now.

15 MR. TILLEY:

16 A. Well, we weren't sharing the report, we were

17 discussing the information that was contained

18 in them, but we weren't circulating the

19 reports per se.

20 COFFEY, Q.C.:

21 Q. And you deferred?

22 MR. TILLEY:

23 A. Well, I guess in our wisdom, or lack thereof,

24 we thought that we were doing the responsible

25 thing by limiting the circulation of the

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1 reports.

2 COFFEY, Q.C.:

3 Q. I'm not suggesting you were wrong to do that.

4 I'm just trying to get some sense for the

5 Commissioner in terms of your own view or

6 understanding for the Commission.

7 MR. TILLEY:

8 A. I guess, where we were with this, we wanted to

9 be sure that we shared as much information as

10 we could to help the Board understand some of

11 the issues here.

12 COFFEY, Q.C.:

13 Q. And attributing those -- that information to

14 the sources, the chief technologist and the

15 doctor?

16 MR. TILLEY:

17 A. That's certainly the indication from my notes.

18 THE COMMISSIONER:

19 Q. So was this kind of a technical thing, we

20 don't give you the paper, but we'll tell you

21 everything that's in it?

22 MR. TILLEY:

23 A. I wouldn't call it a technical thing. It's an

24 effort to try to share information that we

25 have access to, but also working on the

Page 199

1 assumption that we were to protect this

2 information as a part of normal peer review

3 process.

4 COFFEY, Q.C.:

5 Q. And normal peer review process --

6 THE COMMISSIONER:

7 Q. Well, except that --

8 COFFEY, Q.C.:

9 Q. I'm sorry.

10 THE COMMISSIONER:

11 Q. I think I understand the position you take

12 regarding how one treats peer review in the

13 sense of it is to be a confidential one if

14 you're dealing with a particular person, in

15 any event, or perhaps group of people, you

16 follow the procedure that's laid out in your

17 policies for dealing with those individuals,

18 but now you're saying that for the Board, in

19 any event, you would not have provided the

20 Board with copies of the reports, but you

21 would tell the Board everything that's in the

22 reports?

23 MR. TILLEY:

24 A. We were certainly prepared to do that. Those

25 are the people that I would be accountable to

Page 200

1 and would have Dr. Williams share that.

2 THE COMMISSIONER:

3 Q. Okay, so what's the difference?

4 MR. TILLEY:

5 A. In terms of giving the actual reports?

6 THE COMMISSIONER:

7 Q. Yeah, what's the difference in giving them the

8 reports and telling them everything that's in

9 it?

10 MR. TILLEY:

11 A. Well, Madam Commissioner, I suppose

12 technically there's very little in terms of

13 whether you see it in writing or not. When it

14 came to the Department of Health, there was

15 certainly discussions about contents in the

16 report. So we just saw those two groups as

17 being entitled or deserving of having

18 additional information.

19 COFFEY, Q.C.:

20 Q. Which --

21 THE COMMISSIONER:

22 Q. Go ahead.

23 COFFEY, Q.C.:

24 Q. If I could then, which brings me to a question

25 about Mr. Abbott and the fact that you were

Page 201

1 prepared to certainly provide him with actual
 2 copies of the reports in the middle of 2007.
 3 Mr. Abbott, I appreciate, was the Deputy
 4 Minister of the Department of Health, but you
 5 reported to a Board of Trustees of Eastern
 6 Health.
 7 MR. TILLEY:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. Which is a separate organization than the
 11 Department of Health, corporately and
 12 otherwise.
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. So did the confidentiality barrier that you
 17 viewed these reports as being encompassed by,
 18 it extended beyond the trustees because you
 19 could include them in it, let them know what
 20 was in them, so the Deputy Minister of Health,
 21 it also extended to his office, despite the
 22 fact that he worked for, in fact, a completely
 23 different organization?
 24 MR. TILLEY:
 25 A. Yes, and on the basis that the Department of

Page 202

1 Health and Eastern Health, and Health Care
 2 Corporation before it, really had a very close
 3 relationship. We were talking quite
 4 extensively with the Department of Health with
 5 regards to these issues, and, therefore, when
 6 asked, I was prepared to circulate them.
 7 COFFEY, Q.C.:
 8 Q. And there was no objection by anybody? The
 9 people you got it from didn't object, I take
 10 it? Did they know what you were going to do
 11 with it? Did Dr. Cook and Dr. Howell know
 12 what you were going to do with those reports?
 13 MR. TILLEY:
 14 A. I can't recall whether they did or not. Well,
 15 I must have -- Dr. Howell must have known
 16 because that was the source of my copy.
 17 COFFEY, Q.C.:
 18 Q. And did he object?
 19 MR. TILLEY:
 20 A. I don't recall any objection.
 21 COFFEY, Q.C.:
 22 Q. And he would have understood that you were,
 23 "Oscar, I want the reports because I've got to
 24 send them over to John Abbott", he would have
 25 understood that?

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1 MR. TILLEY:
 2 A. I'm sure I would have made that clear.
 3 COFFEY, Q.C.:
 4 Q. And within the organization -- so as of May,
 5 2007, you would have understood that if you
 6 had to go to Dr. Howell, who was Dr. Williams
 7 successor, to get actual copies of the
 8 reports, okay --
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And you stored the reports in an envelope in a
 13 locked drawer in your office.
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Okay, that certainly, I take it, as of May,
 18 2007, you still did not envisage a scenario
 19 where they could be circulated within the
 20 organization?
 21 MR. TILLEY:
 22 A. No, not from my perspective.
 23 COFFEY, Q.C.:
 24 Q. And did you ever ask at that time Dr. Howell
 25 about whether or not the pathologist knew what

Page 204

1 was in these reports?
 2 MR. TILLEY:
 3 A. I don't specifically recall asking him.
 4 COFFEY, Q.C.:
 5 Q. Or the technologist knew what was in these
 6 reports.
 7 MR. TILLEY:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. They're the actual people arguably whose work
 11 had been reviewed.
 12 MR. TILLEY:
 13 A. Right.
 14 COFFEY, Q.C.:
 15 Q. And --
 16 MR. TILLEY:
 17 A. I don't recall asking them.
 18 COFFEY, Q.C.:
 19 Q. And as a CEO, wouldn't it have been important,
 20 do you think, to be aware of whether or not
 21 the subject matters of the reports, the people
 22 involved whose work had been reviewed, were
 23 aware of the results?
 24 MR. TILLEY:
 25 A. Well, I would certainly work on the assumption

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1 that any report pertaining to a particular
 2 work area, in order to do the follow-up, would
 3 have to be explained.
 4 COFFEY, Q.C.:
 5 Q. Mr. Tilley, if these were kept under lock and
 6 key, as it were, I suggest to you that you had
 7 every reason to believe that whether somebody
 8 read a sentence or two from them, from these
 9 reports, the bulk of these reports had never
 10 been circulated?
 11 MR. TILLEY:
 12 A. My understanding was that there was four
 13 copies made.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. TILLEY:
 17 A. One had gone to Dr. Cook. How he kept his, I
 18 have no idea. One stayed with Dr.
 19 Williams/Howell's office, and third one went
 20 to the Risk Manager. The fourth one, I'm not
 21 sure if that was just an extra copy or not.
 22 COFFEY, Q.C.:
 23 Q. So you're not even aware if Mr. Gulliver ever
 24 had one?
 25 MR. TILLEY:

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1 A. I couldn't speak to that.
 2 THE COMMISSIONER:
 3 Q. Who would be the Risk Manager?
 4 MR. TILLEY:
 5 A. Heather Predham.
 6 COFFEY, Q.C.:
 7 Q. And the purpose in her having it?
 8 MR. TILLEY:
 9 A. Other than managing risk -- potential risk
 10 issues, and would typically be keeping
 11 inventory of those sorts of things.
 12 COFFEY, Q.C.:
 13 Q. And she is the primary liaison with HIROC's
 14 lawyer?
 15 MR. TILLEY:
 16 A. She is.
 17 COFFEY, Q.C.:
 18 Q. But in terms of the information contained in
 19 those reports, the bulk of that information,
 20 did you have any reason to believe as of May,
 21 2007, that the bulk of that information had
 22 been conveyed to either the doctors whose work
 23 was reviewed or the technologist?
 24 MR. TILLEY:
 25 A. Did I have any indication that it had not

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1 been?
 2 COFFEY, Q.C.:
 3 Q. Or had been?
 4 MR. TILLEY:
 5 A. I had no indication that it had not been
 6 shared.
 7 COFFEY, Q.C.:
 8 Q. You assumed that it had?
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. So I take it then that the idea that the
 13 pathologist first only heard of some of this
 14 in December of '07, or late November of '07,
 15 that would surprise you?
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Whose responsibility from your perspective was
 20 it to ensure that persons whose work was being
 21 reviewed were made aware of at least the
 22 substance of the conclusions?
 23 MR. TILLEY:
 24 A. Of the pathologists?
 25 COFFEY, Q.C.:

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1 Q. And the technologists.
 2 MR. TILLEY:
 3 A. Well, the Clinical Chief, Program Director.
 4 COFFEY, Q.C.:
 5 Q. So it was your understanding as the CEO that
 6 the Clinical Chief and the Program Director
 7 would have been telling the people working for
 8 them or under them as to the conclusions?
 9 MR. TILLEY:
 10 A. Oh, absolutely.
 11 COFFEY, Q.C.:
 12 Q. Sir, if we could, there is -- Commissioner,
 13 just one second. If we could look at, please,
 14 Exhibit 0342. Actually, the page before I
 15 wanted to ask you about. This is - the source
 16 of this is Pat Pilgrim. It's Volume 4, source
 17 Pat Pilgrim, Tab 3, and Mr. Simmons may know
 18 more about this than you do. It's labelled
 19 "Media, October, 2005". It says, "Story
 20 breaks October, 2005". Do you have any
 21 knowledge of where this story breaks/October,
 22 2005 -- is that the way you would have filed
 23 things?
 24 MR. TILLEY:
 25 A. No.

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1 COFFEY, Q.C.:

2 Q. Okay, I appreciate that. Would you have kept

3 a media file on the ER/PR matter?

4 MR. TILLEY:

5 A. I can't recall keeping a specific one,

6 particularly with Communications being in the

7 building. If anybody was to need something,

8 could easily have accessed it from there.

9 COFFEY, Q.C.:

10 Q. So your office didn't keep a running file?

11 MR. TILLEY:

12 A. My assistant may have, but I'm not aware of

13 it.

14 COFFEY, Q.C.:

15 Q. Okay, who is your assistant?

16 MR. TILLEY:

17 A. Joyce Penney.

18 COFFEY, Q.C.:

19 Q. Now if we could look, please, at Exhibit 0343.

20 It's page two, actually, page two, please.

21 Here we are, thank you. Do you have that, Mr.

22 Tilley?

23 MR. TILLEY:

24 A. Yes, I do, sir.

25 COFFEY, Q.C.:

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1 Q. Thank you. This is -- in the bottom right

2 hand side, do you see October 3, 2005?

3 MR. TILLEY:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Printout from a computer file, and --

7 actually, a HTML file which would be hypertext

8 link, I believe, i.e. a website.

9 MR. TILLEY:

10 A. Okay.

11 COFFEY, Q.C.:

12 Q. There's a -- it says, "Health Care Corporation

13 of St. John's, frequently asked questions

14 about ER/PR". Do you know whether or not this

15 was ever posted? Were there steps taken when

16 the story broke on October 2nd?

17 MR. TILLEY:

18 A. I understood there was some website work going

19 on.

20 COFFEY, Q.C.:

21 Q. And do you know whether there were any

22 advertisements?

23 MR. TILLEY:

24 A. There was an advertisement, but I'm not

25 recalling it at the 3rd of October.

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1 COFFEY, Q.C.:

2 Q. And I'm suggesting -- I'm not suggesting it

3 was.

4 MR. TILLEY:

5 A. Okay. I know there was one later.

6 COFFEY, Q.C.:

7 Q. But the idea of putting some information up on

8 a website, Eastern Health website, would not

9 be at all foreign to you?

10 MR. TILLEY:

11 A. No.

12 COFFEY, Q.C.:

13 Q. Particularly in respect of a matter of public

14 interest?

15 MR. TILLEY:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. In that regard, I take it, apropos my question

19 before lunch about those key messages --

20 MR. TILLEY:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. It wouldn't have been any, I take it if you

24 have the requisite technical skill, no great

25 difficulty to post that on a website?

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1 MR. TILLEY:

2 A. That's very true, sir.

3 COFFEY, Q.C.:

4 Q. If I could, please, Registrar, Exhibit P-0142.

5 Now again, Mr. Tilley, I want to assure you --

6 you're not named either in the "from" or the

7 "to" here.

8 MR. TILLEY:

9 A. Okay.

10 COFFEY, Q.C.:

11 Q. But this is an e-mail of October 3rd, 2005,

12 from Tansy Mundon to senior personnel in the

13 Department of Health, and to the Minister,

14 John Ottenheimer, and she's advising them that

15 Dr. Williams has done a follow up interview

16 with Carolyn Stokes and the status of stories

17 in the Telegram at the time. She notes, "No

18 interest from any other media", and then --

19 this is Monday at 2:51 p.m. She says, "John,

20 I discussed with Susan", which would be Susan

21 Bonnell.

22 MR. TILLEY:

23 A. Uh-hm.

24 COFFEY, Q.C.:

25 Q. "The merits of doing a news release. She

Page 213

1 advised that the strategy in July was that
 2 they would notify patients before they went
 3 public, so they decided against the news
 4 release. She indicated she had the support of
 5 the Department with this approach. She now
 6 feels that "the horse has left the barn", and
 7 that the media that were interested in this
 8 story have already covered it. I requested
 9 for frequently asked questions to be posted to
 10 the website so that people would have easy
 11 access to information. I tend to agree with
 12 Susan this time with the news release. It
 13 seems the opportunity for a news release to be
 14 issued in a proactive manner has passed. I
 15 believe we should continue to monitor the
 16 coverage and the reaction. If we did issue a
 17 news release at this point, then we'll be
 18 picked up by local newspapers and will
 19 probably draw attention to the issue
 20 unnecessarily". I appreciate, as I said, this
 21 was not sent to you.
 22 MR. TILLEY:
 23 A. Uh-hm.
 24 COFFEY, Q.C.:
 25 Q. But you were made aware, though, of the

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1 subject matter of which it deals, which is the
 2 idea of Eastern Health issuing a press release
 3 and the pros and cons of that, the con being
 4 here that it would focus attention on it,
 5 continue to focus attention on it?
 6 MR. TILLEY:
 7 A. Well, back in mid August, it was certainly
 8 talked about in that document where I was
 9 given the strengths and weaknesses of the
 10 three options. As to it now being the early
 11 part of October --
 12 COFFEY, Q.C.:
 13 Q. It is public.
 14 MR. TILLEY:
 15 A. Right.
 16 COFFEY, Q.C.:
 17 Q. Kara Laing, Susan Bonnell, and now Dr.
 18 Williams are being interviewed the first
 19 couple of days.
 20 MR. TILLEY:
 21 A. Right.
 22 COFFEY, Q.C.:
 23 Q. September 30th, presumably, and then October
 24 3rd.
 25 MR. TILLEY:

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1 A. The point being here they're making is that
 2 it's felt that information is already out
 3 there, so the point of issuing a press release
 4 is now being questioned or put to one side.
 5 COFFEY, Q.C.:
 6 Q. Well, it's says "probably draw attention to
 7 the issue unnecessarily", suggesting that
 8 we're advocating don't issue a news release,
 9 keep your head down, and hope that the media
 10 interest dissipates. I mean, that's what it
 11 says, doesn't it?
 12 MR. TILLEY:
 13 A. And in fact, well what it says is -
 14 COFFEY, Q.C.:
 15 Q. Would probably draw attention to the issue
 16 unnecessarily.
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. That is what it says, isn't it?
 21 MR. TILLEY:
 22 A. Yeah, probably draw attention to the issue
 23 unnecessarily.
 24 COFFEY, Q.C.:
 25 Q. Now that idea at the time, I'm asking you as

Page 216

1 the CEO of Eastern Health, was that discussed
 2 within Eastern Health?
 3 MR. TILLEY:
 4 A. I have no recollection of that discussion.
 5 There was certainly a lot happening then.
 6 THE COMMISSIONER:
 7 Q. Mr. Coffey, we know this is October because of
 8 the content?
 9 COFFEY, Q.C.:
 10 Q. Yes, 10 3 of 2005, Commissioner, well I
 11 presume it's -
 12 THE COMMISSIONER:
 13 Q. I would have thought it was the 10th of March,
 14 but that's all right, what do I know?
 15 COFFEY, Q.C.:
 16 Q. Well if it's the 10th of March of 2005 -
 17 THE COMMISSIONER:
 18 Q. I'm assuming that because of the contact, we
 19 assume the numbers are switched.
 20 COFFEY, Q.C.:
 21 Q. Number is in reverse, yes, and that's--I had
 22 just gone on that assumption.
 23 THE COMMISSIONER:
 24 Q. I had the silly idea that the month was
 25 supposed to be in the middle of those numbers.

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1 COFFEY, Q.C.:

2 Q. In terms of this, I suspect that most--I don't

3 know if anybody in the room will take the

4 position that it's March 10th, 2005.

5 THE COMMISSIONER:

6 Q. Well the content, I presume would certainly

7 indicate that it isn't March 10th.

8 COFFEY, Q.C.:

9 Q. Yes. And in terms then of this -

10 THE COMMISSIONER:

11 Q. It's a valuable lesson that you shouldn't

12 necessarily count on the dates on these.

13 COFFEY, Q.C.:

14 Q. Oh yeah. With respect to this issue then, Mr.

15 Tilley, I mean, from your perspective at the

16 time as a CEO of Eastern Health and I

17 appreciate that I take it your view up to

18 September 30th had been hoping that the

19 results would be back and you could get them

20 out.

21 MR. TILLEY:

22 A. That's correct and we'd get them to the

23 patients.

24 COFFEY, Q.C.:

25 Q. Sure. But as that had not happened, September

Page 218

1 30th had occurred, what was your view in terms

2 of as CEO of Eastern Health, in terms of what

3 sort of publicity should be given to this?

4 How much of an effort should be made to get

5 the message out to people?

6 MR. TILLEY:

7 A. Well, I can speak to the fact that we hadn't

8 changed our plans, that we were still

9 intending on getting the results of the

10 retesting and the patients notified. We had

11 Dr. Williams speak to the issue, there was

12 information placed on the website. There may

13 have been a consumer type--yes, there was, a

14 line that people could call if they had

15 information. So at that point in time, I

16 think that was the extent of the reach.

17 COFFEY, Q.C.:

18 Q. Why not issue a press--a news release?

19 MR. TILLEY:

20 A. Well I guess, as I see it, news releases would

21 normally be used to announce information

22 that's new. If you're talking about this

23 story, then the story is obviously out in the

24 media at that point in time.

25 COFFEY, Q.C.:

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1 Q. How about to explain it to people, you know,

2 it's one thing to have a headline and a couple

3 of quotes attributed that could potentially be

4 something else entirely, to actually have it

5 spelled out so that someone could read it -

6 MR. TILLEY:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. You would agree, would you, is the advantage

10 of -

11 MR. TILLEY:

12 A. Well there's always a downside to media in

13 terms of them choosing what gets included or

14 not.

15 COFFEY, Q.C.:

16 Q. But if you actually, for example, had run an

17 advertisement at the time, in effect a news

18 release and buy the advertising space, then

19 the content doesn't get edited, it's there.

20 MR. TILLEY:

21 A. No, that's a fact and I guess that's why the

22 subsequent decision was made.

23 COFFEY, Q.C.:

24 Q. But that's quite some time afterward, isn't

25 it?

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1 MR. TILLEY:

2 A. That's a couple of weeks later, I believe.

3 COFFEY, Q.C.:

4 Q. So and in terms of the website issue, Mr.

5 Tilley by the time this became public in early

6 October, did you have any sense of who, like

7 what gender and age group most of these

8 patients were?

9 MR. TILLEY:

10 A. I was assuming it was mostly female.

11 COFFEY, Q.C.:

12 Q. Yes.

13 MR. TILLEY:

14 A. It was females and post-menopausal females.

15 COFFEY, Q.C.:

16 Q. And then in terms of--you were aware that the

17 patients were not only in the St. John's

18 region or the Avalon or within Eastern Health,

19 but as well extended into the other three

20 health authorities.

21 MR. TILLEY:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. And was any effort, you know, to your

25 knowledge made on the part of the organization

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1 made to monitor the media coverage in other
 2 areas? Like what message was being delivered
 3 to patients?
 4 MR. TILLEY:
 5 A. I'm not aware.
 6 COFFEY, Q.C.:
 7 Q. Now, sir, are you aware, though, of whether or
 8 not any local or any media monitoring was
 9 going on within your own organization
 10 respecting the St. John's media and the
 11 national media?
 12 MR. TILLEY:
 13 A. I know that the Communications Department
 14 would consider that as being a part of their
 15 process and I would assume that they would had
 16 ability to access that.
 17 COFFEY, Q.C.:
 18 Q. Were you being kept apprised of it?
 19 MR. TILLEY:
 20 A. I can't imagine that I wouldn't be apprised of
 21 it.
 22 COFFEY, Q.C.:
 23 Q. If we could, please, Exhibit P-0347. Well
 24 it's two e-mails but the one I'm interested in
 25 is the one earlier in time, Thursday, October

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1 6th, 2005 at 8:43 a.m. from Deborah Thomas-
 2 Pennell, who I gather worked for Susan Bonnell
 3 in your organization at the time, you would
 4 have understood that?
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Okay, and it's to a number of individuals, I
 9 take it mostly board members?
 10 MR. TILLEY:
 11 A. That looks like the executive team and their
 12 assistants.
 13 COFFEY, Q.C.:
 14 Q. Oh executive team, I'm sorry.
 15 MR. TILLEY:
 16 A. And communication staff.
 17 COFFEY, Q.C.:
 18 Q. Yeah, actually the board members list is
 19 longer, I believe, actually in space.
 20 MR. TILLEY:
 21 A. Okay.
 22 COFFEY, Q.C.:
 23 Q. And you're certainly listed in the middle of
 24 the group?
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And this is forwarding a copy of--the subject
 4 is "In Today's Globe and Mail" and the subject
 5 is "Flawed test in perils, scores of cancer
 6 patients. Do you see that?
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. If I could please, then, so you were then, I
 11 take it in this context, certainly being kept
 12 apprised.
 13 MR. TILLEY:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. Of the media coverage.
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Now is that routine? You get the media
 21 coverage on, like any time Eastern Health is
 22 mentioned or is it more on high profile
 23 matters?
 24 MR. TILLEY:
 25 A. I don't recall--it just sort of occurred to me

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1 that there were times I remember getting all
 2 inclusive media updates and I remember that
 3 because it was in my Health Care Corporation
 4 days and suggesting that it get wider
 5 circulation so that all managers would see it.
 6 But I don't know if that continued on in the
 7 long term or not because it was taking up a
 8 lot of space on the system, so whether it was
 9 restricted to high profile areas, may have
 10 been the case.
 11 COFFEY, Q.C.:
 12 Q. But even if it was so restricted, this
 13 certainly fit that criteria.
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Exhibit P-0348 please? Now this is a two-page
 18 exhibit, sir. The first of them is from Peter
 19 Dawe to yourself, it's on page two of the
 20 exhibit, Commissioner. It's Thursday, October
 21 6th at 9:14 hours. The subject is "CBC Online
 22 Article". Mr. Dawe writes "George, CBC Online
 23 News" and he's got the website referenced,
 24 "ran a story today that said that the testing
 25 was for cancer and there were false negative

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1 results. This may cause more confusion,
 2 obviously. More media work will be required,
 3 no doubt. Peter." So I take it you weren't
 4 surprised on October 6th to get this sort of
 5 an e-mail from Mr. Dawe or were you?
 6 MR. TILLEY:
 7 A. No, I can't say I was surprised because I had
 8 known the gentleman before.
 9 COFFEY, Q.C.:
 10 Q. In fact, Mr. Dawe--has Mr. Dawe actually sat
 11 in on board meetings in the Health Care
 12 Corporation?
 13 MR. TILLEY:
 14 A. He actually was a board member.
 15 COFFEY, Q.C.:
 16 Q. Board member, yeah, so you had known him for
 17 years.
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. In that capacity.
 22 MR. TILLEY:
 23 A. Uh-hm.
 24 COFFEY, Q.C.:
 25 Q. And if we look there, the page I have there

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1 now, it's at the bottom of page 1 of the
 2 exhibit and goes into the second page. You
 3 then, at 9:18 a.m., the same morning, wrote to
 4 Susan Bonnell forwarded the CBC online
 5 article, presumably you had received from Mr.
 6 Dawe with the question "Any thoughts?" And
 7 then she, that morning at 9:30 a.m. responded
 8 to you saying, "George, I thought the Globe
 9 piece was accurate. Peter is referring to his
 10 own quote which was very negative, by the way.
 11 The best thing he could do at this point is to
 12 let this go, but by the sounds of it, he's
 13 going to go to the media again. How informed
 14 is he?" And then you responded to her, you
 15 look further up the page at 9:38 a.m, saying
 16 "Bob Williams and I met with Peter 4:30 p.m.
 17 yesterday. It appears he did he interview
 18 with the Globe before we met. In the
 19 meantime, he is referring to the CBC story."
 20 And she says at 9:47 a.m. to you, "So he is,
 21 we can't try to correct past stories unless
 22 the inaccuracies are glaring and a major
 23 problem is created as a result; although I
 24 thought the CBC News Online piece is
 25 'problematic', I don't think it's worth

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1 seeking a retraction. The more we drag this
 2 out, the worse it is for us. Susan." Now,
 3 sir, there are a couple of things I would like
 4 to ask you about here, the comment "the more
 5 we drag this out, the worse it is for us" what
 6 did you understand Ms. Bonnell meant by that?
 7 MR. TILLEY:
 8 A. I really would only be guessing to suggest
 9 that I knew what she meant.
 10 COFFEY, Q.C.:
 11 Q. Well what did you infer at the time, I mean,
 12 you read this and you're her boss once
 13 removed.
 14 MR. TILLEY:
 15 A. Well, we've tried to maintain a very close or
 16 collaborative relationship with the media, but
 17 I'm thinking that if we go back and challenge
 18 them on something that they wrote, that
 19 relationship may be impacted.
 20 COFFEY, Q.C.:
 21 Q. "So the more we drag this out, the worse it is
 22 for us." Does that mean the longer it stays
 23 in the media, the more trouble it creates?
 24 MR. TILLEY:
 25 A. Well that could certainly be an interpretation

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1 as well.
 2 COFFEY, Q.C.:
 3 Q. She doesn't say here, we're going to create a
 4 rift with the media, does she?
 5 MR. TILLEY:
 6 A. Pardon?
 7 COFFEY, Q.C.:
 8 Q. She doesn't say here to you, we're going to
 9 create a rift with the media by asking for a
 10 retraction.
 11 MR. TILLEY:
 12 A. No, no.
 13 COFFEY, Q.C.:
 14 Q. What was your--again, I come back to it
 15 because I had asked you in the context of the
 16 earlier e-mail involving Tansy referencing a
 17 conversation with Susan Bonnell. Now this is
 18 an e-mail exchanged between yourself and Susan
 19 within a matter of days of that, the earlier
 20 e-mail being October 3rd, Exhibit P-0142, this
 21 is October 6th and at least the media people
 22 are expressing the view, the less attention in
 23 the media the better, for all concerned.
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. Now as CEO, was that your view?

3 MR. TILLEY:

4 A. I was very much focused in on patient follow

5 up. Dr. Williams had gone out there and

6 spoken to the issue. There was a period of

7 time that I felt that we had actually handled

8 the media, you know, it was more than just a

9 single contact. But obviously we have a story

10 here that one person is taking exception to

11 and she's making a recommendation that we not

12 pursue it.

13 COFFEY, Q.C.:

14 Q. And it's not only so much that, I take it that

15 we not pursue--what was it she, the

16 retraction, she wanted a retraction about

17 what? She didn't want a retraction, she said

18 there was no point in--or she wouldn't advise

19 trying to get a retraction. What was the

20 concern here, do you know?

21 MR. TILLEY:

22 A. Well I'm going back to Mr. Dawe's original e-

23 mail.

24 COFFEY, Q.C.:

25 Q. Sure, which is P-0348.

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1 MR. TILLEY:

2 A. "The testing for cancer" so obviously an issue

3 that--this issue was more specific than

4 testing for cancer, it was for a particular

5 group.

6 COFFEY, Q.C.:

7 Q. Oh yes, a particular hormone receptor status.

8 It's not whether or not you had cancer or not,

9 not at all, the test that was in question.

10 But see, when you look at Exhibit P-0348, page

11 two, isn't Peter there alerting you to the

12 fact that CBC had ran a story that day that

13 said that the testing was for cancer and there

14 were false negative results, i.e., he was

15 telling you that CBC has run a story that said

16 that they got the diagnosis of cancer wrong,

17 false negative results, that's what Mr. Dawe

18 is telling you.

19 MR. TILLEY:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. Is what he understood from CBC's story. And

23 he says this may cause more confusion, more

24 immediate work will be required, no doubt.

25 He, in fact, is urging you, is he not, to have

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1 that story corrected because it's an important

2 issue, isn't it?

3 MR. TILLEY:

4 A. Uh-hm.

5 COFFEY, Q.C.:

6 Q. You would agree?

7 MR. TILLEY:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. Yet the exchange of e-mails between yourself

11 and Susan resulted in a situation where, I

12 gather there was a decision not to say

13 anything.

14 MR. TILLEY:

15 A. Uh-hm.

16 COFFEY, Q.C.:

17 Q. To leave the misconception out there.

18 MR. TILLEY:

19 A. I can't speak to that particular issue, but I

20 can say that we did reach a point--I'm not

21 sure if it was in 2006 or not--when we

22 continued to be sought after by the media,

23 didn't have information to share because the

24 quality process was going on. So, from that

25 perspective there was a resistance to respond

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1 to any media inquiries. On this particular

2 issue, in terms of a retraction, I'm not able

3 to be definitive on it.

4 COFFEY, Q.C.:

5 Q. This is day, by my count, day five, October

6 2nd through 6th is five days, four to five

7 days, I suppose. And Mr. Dawe, the local

8 representative, spokesperson for the Canadian

9 Cancer Society is bringing to your attention

10 early that morning, he's got concerns about

11 inaccuracies concerning what's at stake here,

12 incorrect diagnosis of cancer -

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. - simpliciter. You're asking your director of

17 communications what she thinks you should do

18 about it. The end result is to lay low.

19 Isn't that effectively what has happened here?

20 MR. TILLEY:

21 A. That's what it implies.

22 COFFEY, Q.C.:

23 Q. Wouldn't you see at the time Eastern Health's

24 primary responsibility to the public and its

25 patients is to ensure that accurate

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1 information was there.
 2 MR. TILLEY:
 3 A. Certainly.
 4 COFFEY, Q.C.:
 5 Q. Now, did you take up with here, did you offer
 6 any difference of opinion to Susan Bonnell
 7 about the expression of her viewpoint, her
 8 philosophy on this?
 9 MR. TILLEY:
 10 A. Not that I recall.
 11 COFFEY, Q.C.:
 12 Q. Suggesting, I take it, at least to her perhaps
 13 that--and we'll hear from her, but she could
 14 have interpreted that as your acquiescence in
 15 an agreement with.
 16 MR. TILLEY:
 17 A. It is possible. Now, to be fair, if you look
 18 at Exhibit P-0346, page one. Here at 1:58
 19 p.m. on the same day, there's a message from
 20 Deborah Thomas-Pennell to a number of people.
 21 I'm sorry, do you have that, Mr. Tilley?
 22 MR. TILLEY:
 23 A. I do, sir. I was just referring back to check
 24 the time.
 25 COFFEY, Q.C.:

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1 Q. That here she's letting you know, "just
 2 letting you know that the incorrect story
 3 regarding ER/PR has been removed from the CBC
 4 national website as requested. Signed,
 5 Deborah". And then you at 2:44 p.m. responded
 6 to her asking, "Deborah, was it at our request
 7 or Canadian Cancer Society (CCS). Signed,
 8 George". And do you know if you ever got a
 9 response or ever figured out whether it was
 10 yourself or the CCS or CBC for that matter?
 11 MR. TILLEY:
 12 A. Not that I can recall.
 13 COFFEY, Q.C.:
 14 Q. But if you had to ask her was it at our
 15 request or the CCS, as of 2:44 that afternoon
 16 at least you didn't know or had not reason to
 17 believe that your organization had actually
 18 asked -
 19 MR. TILLEY:
 20 A. I didn't know, no.
 21 COFFEY, Q.C.:
 22 Q. - for a change.
 23 MR. TILLEY:
 24 A. Now, the other thing is that we're making the
 25 assumption that I'm receiving these consistent

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1 with the time that they're issue. And while I
 2 carry a Blackberry, obviously, there could
 3 have been any number of things that I would
 4 have been involved in at that time.
 5 COFFEY, Q.C.:
 6 Q. And I appreciate that, you may not be--but
 7 certainly some time between 1:58 and 2:44 p.m.
 8 you became aware that the story had been taken
 9 down?
 10 MR. TILLEY:
 11 A. It was certainly sent to me, yes.
 12 COFFEY, Q.C.:
 13 Q. Okay. And you had known as of nine four--
 14 well, I shouldn't say--certainly by 9:18 a.m.
 15 that morning that there was an inaccurate
 16 story up.
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. And there's no record here of you instructing
 21 anybody to take steps to take it down or to
 22 have it taken down or asked to have it taken
 23 down.
 24 MR. TILLEY:
 25 A. Certainly not in the e-mails.

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1 COFFEY, Q.C.:
 2 Q. If we could, please, Registrar, there is
 3 Exhibit P-0087, please. Now, this refers to
 4 and this note, if you see a note number 25--
 5 I'm sorry, it probably is not here, I
 6 apologize. You'll have to--Mr. Tilley, it
 7 won't be in that.
 8 THE COMMISSIONER:
 9 Q. I don't -
 10 MR. TILLEY:
 11 A. Oh, I'm sorry.
 12 COFFEY, Q.C.:
 13 Q. No, no, no reason for you to be sorry.
 14 MR. TILLEY:
 15 A. I wasn't trying to ignore you, sir.
 16 COFFEY, Q.C.:
 17 Q. No, it's just not -
 18 MR. TILLEY:
 19 A. Actually what I was looking for was my own
 20 note pertaining to that.
 21 COFFEY, Q.C.:
 22 Q. Oh yes, okay. Well, certainly assist you in
 23 locating that, but this is just--and again,
 24 why I want to raise it with you is that you
 25 had said that I believe early in the fall

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1 there had been a discussion about this with
 2 the other -
 3 MR. TILLEY:
 4 A. Regional health authorities.
 5 COFFEY, Q.C.:
 6 Q. - regional health authorities. And I'm not
 7 suggesting this is thee one or the only one,
 8 but this is October 4. This is a typed
 9 version of hand written notes of Dr. Williams.
 10 MR. TILLEY:
 11 A. Uh-hm.
 12 COFFEY, Q.C.:
 13 Q. And this refers to a conference call with
 14 other regional board and you're listed as a
 15 participant.
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Okay. And he notes under a bullet, "full
 20 overview of background, Robert Williams (RW),
 21 specific issues reviewed, DC would be done,
 22 questions of whether we should notify all
 23 patients who are being retested". Now, if I
 24 could, if we could bring up please, Exhibit P-
 25 0091. Thank you. And this is an e-mail that

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1 you sent to Patricia Pilgrim on October 6,
 2 2005 at 6:11 p.m., copied it to Bob Williams.
 3 You said, "Pat I just had a conversation with
 4 Dave Dymond who says that he and Susan
 5 Gillian", is it?
 6 MR. TILLEY:
 7 A. Gillam.
 8 COFFEY, Q.C.:
 9 Q. Gill, okay. Is that a typo or is that the way
 10 it's pronounced?
 11 MR. TILLEY:
 12 A. I'm suspecting it might be -
 13 COFFEY, Q.C.:
 14 Q. A typo, okay--"would like the CEOs to come
 15 together to talk about the follow up process
 16 on ER/PR issue. He is not feeling
 17 comfortable"--that is Dave Dymond is not
 18 feeling comfortable--"that they are ready to
 19 respond if called. I suggested that you and I
 20 could meet with them to talk about the
 21 messages we are communicating when people
 22 call, what the role of the patient relations
 23 officer is, what direction is she giving and
 24 how the patient is being connected to the
 25 physician. Perhaps there is some

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1 documentation that we could send. I thought
 2 we could do this without having to pull Bob
 3 in". That would be Bob Williams, I presume.
 4 MR. TILLEY:
 5 A. Williams.
 6 COFFEY, Q.C.:
 7 Q. "I was thinking mid day Tuesday or Wednesday
 8 in the a.m. If you are okay, let Joyce know
 9 and she will set up. Signed, George"--or--
 10 "Thanks, George". So, I take it that there
 11 was some discussion amongst the health
 12 authorities about how the communications with
 13 the patients was going to be handled.
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Who is responsible for what?
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And do you recall -
 22 THE COMMISSIONER:
 23 Q. Do you need your notes, Mr. Tilley?
 24 MR. TILLEY:
 25 A. I would like to, Madam Commissioner, if that's

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1 possible.
 2 THE COMMISSIONER:
 3 Q. We'll locate those for you.
 4 COFFEY, Q.C.:
 5 Q. Would that be in your telephone log, do you
 6 know or -
 7 MR. TILLEY:
 8 A. No, it wouldn't. I'm thinking there would be
 9 one of those black books that I had.
 10 COFFEY, Q.C.:
 11 Q. Okay, if we could, please, Commissioner, it's
 12 Exhibit P-0338, page 8.
 13 THE COMMISSIONER:
 14 Q. 0338, page 8.
 15 COFFEY, Q.C.:
 16 Q. Thank you.
 17 THE COMMISSIONER:
 18 Q. Mr. Tilley, could you confirm that that's what
 19 you're looking for?
 20 MR. TILLEY:
 21 A. Yes, Commissioner, it is. I just want to go
 22 through the numbering here.
 23 COFFEY, Q.C.:
 24 Q. Yes, 0338 -
 25 MR. TILLEY:

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1 A. Nope, sorry, not it.
 2 COFFEY, Q.C.:
 3 Q. I can come around to see if they're in order
 4 or not. Just a second.
 5 MR. TILLEY:
 6 A. I've got it.
 7 COFFEY, Q.C.:
 8 Q. You got it there?
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Okay. Thank you. So, these are the notes,
 13 Mr. Tilley, of October 4, 2005.
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Now, perhaps if you're using those you could -
 18 MR. TILLEY:
 19 A. Would you like me to ready -
 20 COFFEY, Q.C.:
 21 Q. Oh yes -
 22 MR. TILLEY:
 23 A. You'll help me out as I go, right?
 24 COFFEY, Q.C.:
 25 Q. Well, it's very helpful--these, in fact, are--

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1 I have some experience in trying to decipher
 2 your handwriting and these are pretty good.
 3 MR. TILLEY:
 4 A. Okay. If I only knew it would end up at this
 5 stage, I would have tried better.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 MR. TILLEY:
 9 A. Regional medical directors, so that would have
 10 been the vice-presidents of the four regional
 11 health authorities.
 12 COFFEY, Q.C.:
 13 Q. Yes.
 14 MR. TILLEY:
 15 A. Now, is that consistent with--were the CEOs
 16 there you referenced earlier -
 17 COFFEY, Q.C.:
 18 Q. There is a reference there to the -
 19 MR. TILLEY:
 20 A. CEOs, okay, because I know there was a
 21 subsequent meeting, I'm just trying to recall
 22 which is--if this is the first one or not.
 23 COFFEY, Q.C.:
 24 Q. The executive meeting actually is at page 12
 25 of the exhibit.

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1 MR. TILLEY:
 2 A. No, that's not the one, I was just--there were
 3 two meetings with the other Regional Health
 4 Authorities, I'm just trying to get them--it
 5 could very well be this first one, it's just I
 6 thought the CEOs were there.
 7 THE COMMISSIONER:
 8 Q. Would it be appropriate to take the afternoon
 9 break now so that Mr. Tilley could satisfy
 10 himself as to which came in which order -
 11 COFFEY, Q.C.:
 12 Q. Just to make sure that we have them all.
 13 THE COMMISSIONER:
 14 Q. - and you're looking at the ones you wanted
 15 to.
 16 COFFEY, Q.C.:
 17 Q. That would be great, Commissioner, thank you.
 18 THE COMMISSIONER:
 19 Q. All right, well why don't we take that break
 20 now and we can be sure what we're looking at.
 21 (RECESS)
 22 THE COMMISSIONER:
 23 Q. Please be seated. Mr. Coffey?
 24 COFFEY, Q.C.:
 25 Q. Thank you, Commissioner. Now, Mr. Tilley, you

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1 had found your notes?
 2 MR. TILLEY:
 3 A. Yes, I'm sorry, I had found it just after we
 4 had stood up.
 5 THE COMMISSIONER:
 6 Q. That's quite all right.
 7 COFFEY, Q.C.:
 8 Q. So is this the -
 9 MR. TILLEY:
 10 A. Yes, that's the first meeting that I had
 11 referred to earlier with the Regional Health
 12 Authorities, it just that because I saw only
 13 regional medical directors there, it sort of
 14 threw me off.
 15 COFFEY, Q.C.:
 16 Q. Other counsel will be happy to know if you
 17 have to stand here for any period of time, we
 18 have a new mat here and it's really
 19 comfortable to stand on. That's a joke for
 20 the lawyers.
 21 MR. TILLEY:
 22 A. I hope that doesn't extend your stay up there.
 23 COFFEY, Q.C.:
 24 Q. Go ahead, sir, you were going to look at your
 25 notes?

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1 MR. TILLEY:
 2 A. Yes. Now am I responding to a particular
 3 question?
 4 COFFEY, Q.C.:
 5 Q. Yes, well you offered to actually take us
 6 through them.
 7 MR. TILLEY:
 8 A. Oh, okay, sure. So this is a regional medical
 9 director's reference to the website, reference
 10 to the NLMA and I can't be specific on the
 11 NLMA, other than it may have been used in its
 12 newsletter to deal with this issue. It goes
 13 on to say "full briefing to medical directors
 14 breast cancer treatment. One, surgery, tissue
 15 sample and removal; two, other adjunct care or
 16 form, the forms being radiation, systemic,
 17 such as chemo, hormonal and Herceptin" and you
 18 can see there the \$40,000 per patient.
 19 COFFEY, Q.C.:
 20 Q. That's the HER2/neu and Herceptin is about
 21 \$40,000 a patient.
 22 MR. TILLEY:
 23 A. Yes. Focus on ER and PR receptors, markers 70
 24 to 80 percent in the literature. If patient
 25 has marker, they are offered the regime of

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1 hormonal therapy, but vary individually. Pre
 2 2000, I'm thinking that's what it says, "ER/PR
 3 must be greater than 30 percent for hormonal,
 4 post 2000, ten percent plus. Now reporting
 5 any staining and leave to oncologists to
 6 decide." Next page?
 7 COFFEY, Q.C.:
 8 Q. Yes.
 9 MR. TILLEY:
 10 A. Am I the one that's controlling this at the
 11 moment?
 12 COFFEY, Q.C.:
 13 Q. You certainly are.
 14 MR. TILLEY:
 15 A. "Evolving process, pre 1997 used a
 16 biochemistry system to identify marker; 1997
 17 switched to a DAKO equipment semi-automated
 18 system, 40 steps. Tissue removed in OR to
 19 report from pathologist. Room for error along
 20 the way. Late May, discovery of a potential
 21 problem, was it the old or the new (Ventana
 22 System). Literature, 73 percent positive rate
 23 overall, decision to go back several years,
 24 1997, retest all patients with negative
 25 report. Focus on patients who could benefit

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1 from new report. Mount Sinai, only gold
 2 standard in Canada. All specimens sent out
 3 until "clean bill".
 4 COFFEY, Q.C.:
 5 Q. Clean bill is in quotes, yes.
 6 MR. TILLEY:
 7 A. Yes, sorry. "External reviews centralize
 8 reading in province and in city. Need to see
 9 trends", I think that's what that side notes
 10 refers to. My squiggly equal signs I think
 11 refers to approximately.
 12 COFFEY, Q.C.:
 13 Q. That is the mathematical symbol for
 14 approximately.
 15 MR. TILLEY:
 16 A. 350 tests per year, 60 percent from St.
 17 John's, conversation of 25 percent of those
 18 stained. Less 30 percent pre 2000, less 10
 19 percent pre 2003. Literature benefit in
 20 treating patients with Tamoxifen up to ten
 21 years. New reports via surgeons and
 22 oncologists"--so this is, I presume the new
 23 reports coming back from Mount Sinai. Sorry,
 24 "via surgeons and oncologists. Other regions
 25 slide read at Mount Sinai, going to physician

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1 of record (NCTRF or surgeon). 1998, cut-off
 2 value 30 percent, therefore negative if less;
 3 1999, cut-off value 10 percent but didn't
 4 change until January of 2001. Patients were
 5 treated on the basis of either ER or PR
 6 positive. Need to centralize pathologists and
 7 technical and have QI person." QI would be
 8 quality initiatives, I suspect. "Need a
 9 standard operating plan. Where to from here?
 10 City, flagging of reports for surgeons
 11 (addendum report)"--which has an arrow to
 12 Mount Sinai and old report, "and outside of
 13 city, just the Mount Sinai report going out."
 14 Continues on the following page and says
 15 "Conversion rate approximately 25 percent
 16 could benefit from Tamoxifen. ? Processing
 17 specimen in remote areas. In service needs
 18 for surgeons, pathologists, technologists, et
 19 cetera." Mount Sinai, as you figured by now,
 20 I wasn't spelling that very well, "processing
 21 as quickly as possible, maybe one/two months
 22 more prior to all in. !!!! lack of standards
 23 in country variations"--
 24 COFFEY, Q.C.:
 25 Q. Sorry, is that -

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1 MR. TILLEY:
 2 A. Oh sorry, "in industry, variations throughout
 3 the clinic." I wonder--anyway, that's what it
 4 says. "Total number cases, 350/per year. 20
 5 percent negative, refer to physician of record
 6 for treatment, letter going out from NCTRF to
 7 physicians. Interim message, retesting,
 8 physician notified and patient contacted." So
 9 then, sorry, "Concern, confusing messages.
 10 Eastern"--which is Nancy Parsons which would
 11 have been the patient relations officer, then
 12 a point about communications and then a point
 13 about "meeting with Kara Laing as or re
 14 whether we should change strategy re
 15 notification pre results." I think the other,
 16 the next page goes on to another meeting.
 17 COFFEY, Q.C.:
 18 Q. Now sir, if you could just take us, your notes
 19 were made as the conversation went on. Who
 20 led this conversation, do you know?
 21 MR. TILLEY:
 22 A. My expectation would be Dr. Williams.
 23 COFFEY, Q.C.:
 24 Q. And I take it this was a planned -
 25 MR. TILLEY:

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1 A. A planned meeting?
 2 COFFEY, Q.C.:
 3 Q. A planned meeting.
 4 MR. TILLEY:
 5 A. It was organized for this purpose.
 6 COFFEY, Q.C.:
 7 Q. Sir, there is a reference in the notes at a
 8 couple of points to the percentages.
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. There's one I'm looking at right there on the
 13 page now, it's at page 8 of the exhibit,
 14 bottom of the page, "Pre 2000 ER/PR must be
 15 greater than 30 percent, hormonal and then
 16 post 2000, 10 percent plus."
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. And then there's "now reporting any staining
 21 and leave to oncologists to decide". Sir, if
 22 we could, I just want to bring you to, yes,
 23 this is on page 10 of the exhibit,
 24 Commissioner. In the middle of the page
 25 there, "1998 cut-off value, 30 percent,

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1 therefore negative if less; 1999 cut-off value
 2 10 percent but didn't change until January
 3 2001." Did he ever have any real explanation
 4 for you as to what or how these cut-off points
 5 were decided?
 6 MR. TILLEY:
 7 A. I understood they were standards that the
 8 oncology community used and pathology
 9 community in terms of what was recognized as
 10 the percent threshold for which something like
 11 Tamoxifen would have the greatest benefit.
 12 COFFEY, Q.C.:
 13 Q. And you were given to understand that that had
 14 varied over time?
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. That changed as time went on. I take it that
 19 this is an understanding you were given, you
 20 had no input into what percentages were used
 21 in terms of the retesting? You weren't asked
 22 for your opinion as to whether it should be 30
 23 percent -
 24 MR. TILLEY:
 25 A. No, and if I was, I wouldn't be able to

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1 contribute to it.
 2 COFFEY, Q.C.:
 3 Q. And at what level was that decided, do you
 4 know? Based upon your observations of the
 5 process.
 6 MR. TILLEY:
 7 A. I would assume that it would have gone to at
 8 least the clinical chief level for the
 9 oncology group and the pathology group and I
 10 would be very surprised if they would not have
 11 talked about that with their colleagues.
 12 THE COMMISSIONER:
 13 Q. Can we find out what didn't change until
 14 January 2001 means? Do you remember?
 15 COFFEY, Q.C.:
 16 Q. Do you know, do you recall that?
 17 MR. TILLEY:
 18 A. I'm sorry? I should put my glasses on.
 19 COFFEY, Q.C.:
 20 Q. Right there, it's page 10, Exhibit P-0338 and
 21 it's right there in the middle of the page.
 22 "Cut-off value 10 percent but didn't change
 23 until January 2001."
 24 MR. TILLEY:
 25 A. My understanding, Commissioner, from that is

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1 that it was at that point in time the research
 2 must have been pointing to the reality that
 3 the 30 percent was not no longer the
 4 appropriate standard, that as of that
 5 particular date -
 6 THE COMMISSIONER:
 7 Q. Which date? 1999 or 2001?
 8 MR. TILLEY:
 9 A. Well I'm assuming 1991--sorry, 2001.
 10 COFFEY, Q.C.:
 11 Q. And can you explain the reference then to 1999
 12 and 10 percent?
 13 MR. TILLEY:
 14 A. No, I really can't.
 15 COFFEY, Q.C.:
 16 Q. Okay, we'll have to take it up with the
 17 physicians.
 18 MR. TILLEY:
 19 A. Hopefully it makes sense, but I can't -
 20 COFFEY, Q.C.:
 21 Q. "But didn't change", it's one thing to say in
 22 1999 and, of course, the question might arise,
 23 well what was going on in the year 2000?
 24 MR. TILLEY:
 25 A. Yeah, I'm just going to try and figure it out,

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1 but I really don't know much about it.
 2 COFFEY, Q.C.:
 3 Q. Okay. And in any case, from your perspective,
 4 I take it that's something that would be a
 5 clinical -
 6 MR. TILLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Clinical-decision making process and a
 10 discussion, if any. Can we just, like here
 11 for example at the bottom of page 9 of the
 12 exhibit, "conversion of 25 percent of those
 13 stained less 30 percent", what is that?
 14 MR. TILLEY:
 15 A. "Pre 2000".
 16 COFFEY, Q.C.:
 17 Q. Less 10 percent -
 18 MR. TILLEY:
 19 A. 10 percent pre 2003.
 20 COFFEY, Q.C.:
 21 Q. So conversion of 25 percent of those stained,
 22 I presume less than 30 percent in the pre 2000
 23 era less and less than -
 24 MR. TILLEY:
 25 A. 10 percent pre 2003.

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1 COFFEY, Q.C.:
 2 Q. - 10 percent of those pre 2003, but the
 3 conversion of 25 percent, was it your
 4 understanding at that time that was the
 5 conversion rate that they were experiencing?
 6 MR. TILLEY:
 7 A. No.
 8 COFFEY, Q.C.:
 9 Q. Okay, so what did you understand, if anything?
 10 MR. TILLEY:
 11 A. Well, somewhere in my notes there is a
 12 reference to something which alludes to that.
 13 As I recall it, the Mount Sinai were
 14 suggesting that the range should be in the 70
 15 to 80 percent positivity rate. There was a
 16 calculation which suggested that Eastern
 17 Health's and Health Care Corporation's rates
 18 overall were in, on average, in the mid 70's
 19 and the expectation was, was that overall
 20 positivity rate would go up into the 80's.
 21 COFFEY, Q.C.:
 22 Q. Okay, and then that conversion of 25 percent,
 23 where would the 25 come from?
 24 MR. TILLEY:
 25 A. I really can't explain that in terms of

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1 whether it was something that was referenced
 2 in relation to those particular groups or not.
 3 COFFEY, Q.C.:
 4 Q. Okay. I'm just going to run up the page again
 5 here now, again. And I take it that the
 6 reference to external reviews, centralized
 7 readings in province, I take it you were
 8 telling the other people involved in a
 9 conference call that the external reviewers
 10 had recommended that all the readings for
 11 ER/PR be centralized within the province and
 12 within St. John's.
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Because this would involve, of course, a
 17 shifting of the interpretation work from
 18 pathologists outside Eastern Health into a
 19 particular area in St. John's.
 20 MR. TILLEY:
 21 A. Right.
 22 COFFEY, Q.C.:
 23 Q. So this would have been a change in the
 24 practice and you were alerting these people to
 25 this.

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1 MR. TILLEY:
 2 A. Well to suggest that there was a
 3 recommendation that was leaning towards that.
 4 COFFEY, Q.C.:
 5 Q. At the time, had anybody expressed any
 6 reservation, do you recall?
 7 MR. TILLEY:
 8 A. About?
 9 COFFEY, Q.C.:
 10 Q. About that idea.
 11 MR. TILLEY:
 12 A. I don't recall and I suspect if, I would like
 13 to think if there was, I would have flagged it
 14 at that point.
 15 COFFEY, Q.C.:
 16 Q. Now again at the top of page 11 of Exhibit P-
 17 0338, again it's a conversion rate,
 18 approximately 25 percent. And the
 19 approximately is that mathematical symbol.
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Again what's meant here by conversion rate?
 24 Conversion rate generally in this whole
 25 scenario has been going from -

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1 MR. TILLEY:
 2 A. Negative to positive. Then that's the
 3 assumption that I would apply it to.
 4 COFFEY, Q.C.:
 5 Q. Now on that point, there is in the material,
 6 not in all the material that I referred you
 7 to, but there is, and the Commissioner is
 8 going to see an awful lot of this, there are
 9 an awful lot of arithmetic calculations at
 10 times, in terms of percentages and fractions.
 11 MR. TILLEY:
 12 A. Okay.
 13 COFFEY, Q.C.:
 14 Q. Sixteen divided by 25, that kind of thing.
 15 MR. TILLEY:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. We saw it even in Dr. Banerjee's report
 19 yesterday when we looked at it, he looked at a
 20 conversion rate using a particular percentage.
 21 Dr. Williams, I gather his material is replete
 22 with it, a lot of handwriting.
 23 MR. TILLEY:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. And perhaps Dr. Cook's as well. In the
 2 discussions you were having in the summer of
 3 2005 and throughout the fall of 2005 with Dr.
 4 Williams or Dr. Cook, was there a lot of
 5 discussion about percentages and conversion
 6 rates and -
 7 MR. TILLEY:
 8 A. I don't recall a lot, though I seem to
 9 remember in one of my notes doing a
 10 calculation of that nature and my
 11 interpretation of it was related to the
 12 positivity rate and the changes in that.
 13 COFFEY, Q.C.:
 14 Q. In terms of calculating what the overall new
 15 positivity rate was in St. John's.
 16 MR. TILLEY:
 17 A. Right, yes.
 18 COFFEY, Q.C.:
 19 Q. As time went on, because by this point in
 20 time, certainly by the late September of 2005,
 21 at least the first of the--not September 20th
 22 because this is September 21st, but--I
 23 apologize, no this is October 4th, by then the
 24 first results were back from Mount Sinai. Why
 25 was Eastern Health and your managers keeping

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1 track of the conversion rate? For any one
 2 individual patient, it didn't much matter
 3 except whether or not they converted.
 4 MR. TILLEY:
 5 A. Right.
 6 COFFEY, Q.C.:
 7 Q. In terms of patient care, so in terms of the
 8 overall conversion rate, why did that matter
 9 or why might it matter?
 10 MR. TILLEY:
 11 A. Just one more piece of information to make an
 12 overall assessment, I suspect.
 13 COFFEY, Q.C.:
 14 Q. And the overall assessment, I take it, of how
 15 many -
 16 MR. TILLEY:
 17 A. People were changing from negative to
 18 positive, yes.
 19 COFFEY, Q.C.:
 20 Q. There's a reference here to, at the bottom of
 21 page 11 of the exhibit, to "concern, confusing
 22 messages" see that?
 23 MR. TILLEY:
 24 A. Yes, I do.
 25 COFFEY, Q.C.:

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1 Q. What was that about, do you know? And
 2 underneath it it says "Eastern, Nancy
 3 Parsons".
 4 MR. TILLEY:
 5 A. Well there was a reference to the physician
 6 being notified and the patient being contacted
 7 just above that.
 8 COFFEY, Q.C.:
 9 Q. Yes, there is.
 10 MR. TILLEY:
 11 A. So I'm thinking that somebody is referencing
 12 the fact that maybe physicians might be
 13 communicating this in different ways. So
 14 that's what I would think it pertains to.
 15 COFFEY, Q.C.:
 16 Q. I take it the CEOs and the people involved in
 17 the teleconference were talking about what
 18 should we, at least have a consistent message
 19 to the patients we're delivering this news to?
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And that at the bottom of that page, page 11
 24 of the exhibit, a reference to "a meeting with
 25 Kara Laing, re whether we should change

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1 strategy re notification pre-results."
 2 MR. TILLEY:
 3 A. Pre-results, yes.
 4 COFFEY, Q.C.:
 5 Q. What was that about?
 6 MR. TILLEY:
 7 A. I can only assume it is as it is written that
 8 at this point in time there was a growing
 9 discussion with regards to getting out there
 10 and talking to the individual patient to say
 11 we are retesting your results.
 12 COFFEY, Q.C.:
 13 Q. Your particular results.
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. As a patient.
 18 MR. TILLEY:
 19 A. Yes, that's right.
 20 COFFEY, Q.C.:
 21 Q. As of October 4th, this was public.
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. But any one individual patient might not know

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1 whether or not they fell within the retesting
 2 group?
 3 MR. TILLEY:
 4 A. Right, that's correct. Because I think
 5 somewhere along the way the hospital, the
 6 organization was starting to get some calls
 7 from patients and some of them weren't even
 8 related to this.
 9 THE COMMISSIONER:
 10 Q. Can you tell me whether when the physicians
 11 were used to convey information to patients,
 12 did Eastern Health send some little form to a
 13 physician that says "This test which was
 14 conducted at such and such a time has been
 15 retested and here is the result", or did it go
 16 with a letter which had an explanation for how
 17 you came to retest and that kind of stuff?
 18 MR. TILLEY:
 19 A. Commissioner, I can't say specifically, though
 20 there was a reference earlier to a letter
 21 going to physicians and I haven't seen the
 22 letter.
 23 THE COMMISSIONER:
 24 Q. So was that to all physicians or was it to the
 25 physicians who would be talking to patients.

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1 MR. TILLEY:
 2 A. My understanding was to all physicians.
 3 THE COMMISSIONER:
 4 Q. Okay.
 5 COFFEY, Q.C.:
 6 Q. And we will see one, Commissioner, that went
 7 out to the NLMA from Paul Gardiner, do that
 8 ring a bell?
 9 MR. TILLEY:
 10 A. Yes, he would have been in the cancer care
 11 program.
 12 THE COMMISSIONER:
 13 Q. Thank you.
 14 COFFEY, Q.C.:
 15 Q. So within a couple of days after the issue has
 16 gone public, as it were, yourself as a CEO and
 17 your fellow CEOs, I presume, still haven't
 18 come to grips with whether or not individual
 19 patients should be told about the fact that
 20 they are being retested and you were going to
 21 have to consult with Kara Laing about that.
 22 MR. TILLEY:
 23 A. That's what that leaves me with the impression
 24 with, yes.
 25 COFFEY, Q.C.:

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1 Q. Now, sir, if we could please, if you look
 2 please at Exhibit P-0349? And this is an e-
 3 mail from--do you have it, I'm sorry, Mr.
 4 Tilley.
 5 MR. TILLEY:
 6 A. 349?
 7 COFFEY, Q.C.:
 8 Q. Yes, it's an e-mail from Dianne Smith, October
 9 7th, 2005 at 4:18 p.m. to Susan Gillam and
 10 she's with?
 11 MR. TILLEY:
 12 A. She's with the Western Regional Health
 13 Authority.
 14 COFFEY, Q.C.:
 15 Q. And it's copied to Dr. Williams and yourself
 16 and Patricia Pilgrim. And the subject is
 17 "Information Requested. Attached information
 18 is forwarded on behalf of Patricia Pilgrim for
 19 your perusal and in preparation of a meeting
 20 scheduled by Mr. Tilley's office for this
 21 coming Tuesday, October 12th at 12:30 p.m."
 22 Now do you recall, and if we turn to page two,
 23 I'll just turn the page here, an "Overview of
 24 Estrogen progesterone receptor testing" and
 25 this is, has a description of what the process

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1 is about, first of all, and then the next page
 2 has "Consumer Feedback" and "The following
 3 questions and answers are posted on our
 4 website and form the basis of our response to
 5 individuals when they inquire." And a list of
 6 questions and answers. At the bottom of the
 7 page, "Synopsis of Feedback received to date"
 8 in which I gather is a summary that as of
 9 October 7th, 2005, 11 calls had been received
 10 regarding ER/PR and you just referred to that,
 11 sir, yourself. And this is an explanation as
 12 to how Eastern Health was dealing with such
 13 calls, on through the next page.
 14 MR. TILLEY:
 15 A. Uh-hm.
 16 COFFEY, Q.C.:
 17 Q. Now sir, there's as well, we go on here--yes.
 18 The fifth page of the exhibit--re-scale that,
 19 please, Registrar? Thank you. This is a
 20 document entitled "Retesting process for
 21 samples outside the St. John's area." I take
 22 it this is a flow chart explaining how the
 23 areas outside--retesting process for samples
 24 outside the St. John's area was being handled?
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. You can have a look and -
 4 MR. TILLEY:
 5 A. Is there any way we can enlarge it a slight
 6 amount?
 7 THE COMMISSIONER:
 8 Q. That one is in your book.
 9 MR. TILLEY:
 10 A. Yes, okay.
 11 THE COMMISSIONER:
 12 Q. It might be easier to read from that source.
 13 MR. TILLEY:
 14 A. Sorry, Commissioner, but even the book is
 15 presenting a bit of a challenge to me today.
 16 THE COMMISSIONER:
 17 Q. Oh, is it, oh.
 18 MR. TILLEY:
 19 A. Unless I could get it on an angle and stretch
 20 my arm a bit. That's great.
 21 THE COMMISSIONER:
 22 Q. Okay.
 23 COFFEY, Q.C.:
 24 Q. See your ophthalmologist--optometrist, I
 25 suppose is what it is.

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1 MR. TILLEY:
 2 A. I'm sure if they hear this, they're going to
 3 be knocking on my door.
 4 COFFEY, Q.C.:
 5 Q. And again, this would have been--had you seen
 6 this before?
 7 MR. TILLEY:
 8 A. Yes, I have a recollection of seeing this. I
 9 think -
 10 COFFEY, Q.C.:
 11 Q. You did refer earlier to a flow chart.
 12 MR. TILLEY:
 13 A. Right. Ms. Pilgrim had been one of the
 14 individuals that had either developed this or
 15 caused it to be developed.
 16 COFFEY, Q.C.:
 17 Q. And I take it the point here, I gather, was
 18 was Diane Smith was sending to Susan Gill?
 19 MR. TILLEY:
 20 A. Gillam.
 21 COFFEY, Q.C.:
 22 Q. Gillam, I apologize. And copying yourself and
 23 others kind of this summarizing information,
 24 letting her know what the experience had been
 25 since it went public with Eastern Health and

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1 providing a flow chart?

2 MR. TILLEY:

3 A. Yes, this was specifically for samples outside

4 the St. John's area.

5 COFFEY, Q.C.:

6 Q. Yes. Now, sir, if we could please look at

7 Exhibit P-0350? Now this is on Eastern Health

8 letterhead, it's a letter or memo October

9 12th, 2005 addressed by Dr. Williams to a

10 number of physicians and Ms. Predham. The

11 physicians are Doctors Laing, Kwan, Felix,

12 McCarthy, Zulfiqar, Ganguly and Cook. And Dr.

13 Williams--it's about the bottom of the page,

14 it's copied to yourself and Ms. Pilgrim?

15 MR. TILLEY:

16 A. Um-hm.

17 COFFEY, Q.C.:

18 Q. And Dr. Williams is saying, "I'm writing with

19 respect to a suggestion that was made to this

20 organization with respect to making decisions

21 on patients whose ER and PR results changed as

22 testing is received back from Mount Sinai

23 Hospital. The suggestion was that we get

24 together a panel of physicians to review all

25 patients in this category so that a plan can

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1 be recommended to the physician who is

2 following up on each of these patients. This

3 suggestion is an excellent one. I want to

4 thank you for agreeing to serve on this

5 panel." And he goes on about the best time to

6 meet. First, "A meeting of the group will

7 take place on Thursday, October 13th at 5

8 p.m." in a particular location. And he

9 continues, I want to thank all of you for

10 agreeing to serve on this panel and especially

11 to Dr. Laing, who has agreed to chair this

12 group." And he refers to "Secretarial support

13 will be provided by the quality and systems

14 improvement department of Eastern Health. And

15 Dr. Donald Cook will sit on the panel ex-

16 officio to insure that all information from

17 the laboratory medicine program is available

18 to the panel." And he thanks them again for

19 agreeing to serve on the panel and assures

20 them that that group would have full support.

21 Now, what was your understanding of what was

22 happening here? Had you been consulted about

23 this beforehand?

24 MR. TILLEY:

25 A. I could have been apprised. I wouldn't have

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1 been able to add much to it. I have a

2 recollection about a discussion in terms of

3 consistency of the interpretations.

4 COFFEY, Q.C.:

5 Q. Who would that have been with?

6 MR. TILLEY:

7 A. Dr. Williams. Somewhere along the way I was

8 picking up bits and pieces of people whose

9 physicians had already moved on, so there not

10 being anybody necessarily to refer to. So in

11 a very general way I can't imagine that I

12 wouldn't have been aware of that.

13 COFFEY, Q.C.:

14 Q. The fact that there was going to be this

15 physician panel?

16 MR. TILLEY:

17 A. Right.

18 COFFEY, Q.C.:

19 Q. And what was your understanding of their role?

20 MR. TILLEY:

21 A. That they would be looking at the medical

22 record for each of the patients whose tests

23 were being retested.

24 COFFEY, Q.C.:

25 Q. Um-hm.

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1 MR. TILLEY:

2 A. And would be making an assessment as a group

3 in terms of what the--any treatment follow-up

4 should be.

5 COFFEY, Q.C.:

6 Q. Now, up to this point in time certainly the

7 patients who had been notified back in summer,

8 July, those 12 patients had been notified -

9 MR. TILLEY:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. - back in June or July of 2005, there had been

13 no such physician panel, I take it, then?

14 MR. TILLEY:

15 A. No.

16 COFFEY, Q.C.:

17 Q. The physician panel, was there any discussion

18 about whether--you know, how quickly they

19 could work, because you were going to end up

20 with hundreds and hundreds of results?

21 MR. TILLEY:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. Like, in the beginning, I appreciate and we'll

25 talk later about what actually happened, but

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1 in the beginning, I mean, you got this
 2 bottleneck of results in a sense of, you know,
 3 you had to get all the results up to Mount
 4 Sinai to be retested, have them turn them
 5 around and send them back, and they were
 6 sending them back 50, 100 or more at a time?
 7 MR. TILLEY:
 8 A. Um-hm.
 9 COFFEY, Q.C.:
 10 Q. Depending on which -
 11 MR. TILLEY:
 12 A. Right.
 13 COFFEY, Q.C.:
 14 Q. And this all had to go through a panel. So at
 15 the time was any thought given to, well, how
 16 is this going to work?
 17 MR. TILLEY:
 18 A. I mean, my initial thought as I look at it is
 19 to say, you know, the fact of meeting once a
 20 week is going to be a real challenge here.
 21 But it's easy to say that now that I'm looking
 22 back at it two years later and I can't say
 23 with confidence, if I don't have a note, that
 24 I actually talked about that. I did know, and
 25 I think it would be understood, that each of

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1 these physicians would be individuals that
 2 would be in high demand in the organization
 3 and to be able to carve out any amount of time
 4 would be considered a good thing. But, it's a
 5 matter of balancing off their availability
 6 with the need to get this process flowing.
 7 COFFEY, Q.C.:
 8 Q. And again, why the need for--what was your--
 9 again, I appreciate it wasn't your decision, I
 10 gather this was not something you were asked,
 11 "George," you know, "do you approve or not?"
 12 or were you?
 13 MR. TILLEY:
 14 A. No, I wouldn't be asked to approve. Now,
 15 whether Dr. Williams said, "Look, there's a
 16 recommendation here to put together, what do
 17 you think about that?" I might have said,
 18 "That's a great idea."
 19 COFFEY, Q.C.:
 20 Q. Yeah.
 21 MR. TILLEY:
 22 A. But in terms of having evidence to be able to-
 23 -or knowledge to be able to say specifically
 24 why, it would make sense to me to have
 25 multiple people around an issue.

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1 COFFEY, Q.C.:
 2 Q. Although I suggest to you routinely that's not
 3 what happens in medicine?
 4 MR. TILLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. You have -
 8 MR. TILLEY:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. - an oncologist -
 12 MR. TILLEY:
 13 A. That would be considered a luxury.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. TILLEY:
 17 A. But, of course, this wasn't a routine
 18 situation, either.
 19 COFFEY, Q.C.:
 20 Q. Okay. And in terms of the rationale, then,
 21 you're saying, for it, we're best talking to
 22 or inquiring of Dr. Williams and whomever -
 23 MR. TILLEY:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. It is his letter?
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Okay. If we could, please, Exhibit P-0351?
 6 This is a document entitled "Review of
 7 Immunohistochemistry Lab, General Hospital
 8 Site, St. John's, Eastern Health." It's
 9 prepared for Dr. Williams, prepared by Terry
 10 Gulliver and Dr. D. Cook, November 13th, 2005?
 11 Do you have that?
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And at the top left-hand side of the page, the
 16 cover page, page 1 of the exhibit, this is Bob
 17 Williams' handwriting. I take it that says,
 18 "Mr. Tilley, now that you have seen this
 19 document can we discuss implementation? This
 20 is for all immunohistochemistry, not just ER
 21 and PR."
 22 MR. TILLEY:
 23 A. Okay.
 24 COFFEY, Q.C.:
 25 Q. October 31, 2005?

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1 MR. TILLEY:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. So why would this have been forwarded to you?
 5 MR. TILLEY:
 6 A. Well, I'm thinking--I'm seeing dollar signs.
 7 COFFEY, Q.C.:
 8 Q. Oh, yes. If you go to page 7, in particular,
 9 of the exhibit? Thank you. The very bottom
 10 of the page there under "Conclusion" there's
 11 an overall, "If all the recommendations
 12 outlined above," I'm sorry, "are implemented,
 13 the General Hospital site should be able to
 14 offer immunohistochemistry service equivalent
 15 to that available at the laboratory of Mount
 16 Sinai. Some of these recommendations have
 17 already been implemented. Others can be
 18 implemented fairly quickly. However, it may
 19 take six to nine months to complete all
 20 recommendations. Overall adjustments required
 21 to be added to base budget total of \$282,200."
 22 And then there are--sorry, turn the page to
 23 the last page, if we could? "One time costs
 24 associated with staff training, \$48,000. One
 25 time costs capital purchase, \$40,000. I look

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1 forward to a favourable response to this
 2 proposal. If you require any further
 3 information or any further clarification, we'd
 4 be happy to meet with you." And that's Mr.
 5 Gulliver and Dr. Cook are writing to Dr.
 6 Williams who has written to you?
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Now, you read it. What happened?
 11 MR. TILLEY:
 12 A. Well, I can certainly remember a discussion
 13 that we had within the organization to say if
 14 there's anything that we invested in this
 15 year, it was going to be that and that we
 16 would come up with the resources to support
 17 it.
 18 COFFEY, Q.C.:
 19 Q. What happened? This is the fall of 2005. You
 20 are--let me see if I got it right. You're
 21 seven months, on October 31st, 2005 you're
 22 seven months into your fiscal year. Your
 23 fiscal year is April 1?
 24 MR. TILLEY:
 25 A. Yes. So also by that point in time I suspect

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1 we were preparing the budget for the following
 2 year.
 3 COFFEY, Q.C.:
 4 Q. Um-hm.
 5 MR. TILLEY:
 6 A. Don't know if any of that went into that
 7 budget process. You might -
 8 COFFEY, Q.C.:
 9 Q. There is a line, a \$282,000 line item.
 10 MR. TILLEY:
 11 A. Oh, okay. So that's one of the places that it
 12 obviously was followed up on.
 13 COFFEY, Q.C.:
 14 Q. And I will tell you, Commissioner, you will be
 15 seeing that, you know, later on, it's -
 16 MR. TILLEY:
 17 A. Okay, yeah. So certainly that was the intent
 18 to put that forward with a time line of six to
 19 nine months. There was no disagreement that
 20 we were heading in this direction.
 21 COFFEY, Q.C.:
 22 Q. Was the money forthcoming?
 23 MR. TILLEY:
 24 A. Did it come afterwards?
 25 COFFEY, Q.C.:

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1 Q. Yeah.
 2 MR. TILLEY:
 3 A. I can't answer that.
 4 COFFEY, Q.C.:
 5 Q. Who, then, would be able to answer that?
 6 MR. TILLEY:
 7 A. In terms of whether it came out specifically
 8 from the Department of Health?
 9 COFFEY, Q.C.:
 10 Q. Like, well -
 11 MR. TILLEY:
 12 A. Is that what you mean?
 13 COFFEY, Q.C.:
 14 Q. You're looking for an extra \$282,000.
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Plus, in fact, when I say it's a line item,
 19 the 282, nice round figure is a line item in a
 20 budget. But the 48 and 40, I won't say
 21 anything about those. Do you know if the
 22 282,000, roughly, was ever forthcoming?
 23 MR. TILLEY:
 24 A. From government?
 25 COFFEY, Q.C.:

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1 Q. Yes.
 2 MR. TILLEY:
 3 A. I can't speak to it.
 4 COFFEY, Q.C.:
 5 Q. Because it would have been an extra?
 6 MR. TILLEY:
 7 A. Extra amount?
 8 COFFEY, Q.C.:
 9 Q. For the base budget?
 10 MR. TILLEY:
 11 A. Oh, yes, yeah. Now, with a billion dollar
 12 budget, of course, there's multiple things
 13 going in and multiple things coming back. But
 14 I can't specifically say to you that that
 15 figure was responded to specifically. Within
 16 the organization we had clearly felt that we
 17 were moving in that direction.
 18 COFFEY, Q.C.:
 19 Q. So why would this have been sent to you?
 20 MR. TILLEY:
 21 A. I guess Dr. Williams made a decision to
 22 forward it over. I can't be more specific
 23 than that.
 24 COFFEY, Q.C.:
 25 Q. Well, "Can we discuss implementation?" so did

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1 you discuss implementation, if so, what was
 2 said about it?
 3 MR. TILLEY:
 4 A. As I alluded to earlier, I remember saying if
 5 there's anything that we do, it's going to be
 6 follow-up on this issue, recognizing what
 7 we've been through in the past year. So there
 8 wasn't a question that we would be moving
 9 forward.
 10 COFFEY, Q.C.:
 11 Q. Did you make it your business to find out or
 12 to track whether or not this money actually
 13 got spent on what was specified?
 14 MR. TILLEY:
 15 A. No, I would leave that then to those people
 16 directly involved.
 17 COFFEY, Q.C.:
 18 Q. Which would be Dr. Williams, I take it?
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. Did you ever hear any complaints from him
 23 afterward about not having the money to do it?
 24 MR. TILLEY:
 25 A. No.

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1 COFFEY, Q.C.:
 2 Q. Sir, if we could look at, I'm sorry, Exhibit
 3 P--before I do that. Just, you know, if we
 4 could, just for a moment, please, I want to
 5 take the time, Exhibit P-0351, which is there,
 6 you would have, as Dr. Williams notes in the
 7 cover page, "Now that you have seen this
 8 document." Here, you know, it begins with
 9 introduction, background, objective, scope.
 10 And the objective is described as, on page 2
 11 of the exhibit, paragraph 1.2, "The objective
 12 of this proposal is to identify the
 13 requirements needed to implement a complete
 14 quality assurance program for the
 15 immunohistochemistry lab, ensuring that we
 16 provide a standardized and reliable service
 17 equivalent to the Mount Sinai referenced lab
 18 in Toronto." Okay?
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And the methodology, paragraph 1.4 "Work
 23 processes were reviewed internally by the lab
 24 program, including the pathology manager
 25 technologist, site chief, clinical chief and

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1 program director. Additionally, suggestions
 2 from the QI review by Heather Predham and the
 3 on site visits by Dr. D. Banerjee from the
 4 B.C. Cancer Agency and Trish Wegrynowski from
 5 Mount Sinai are also incorporated in this
 6 proposal." I take it as the written reports
 7 were not yet in, Dr. Banerjee's was first and
 8 that's October 17th?
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. This is October 13th, so this presumably would
 13 incorporate the verbal debriefings?
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Of both of them. Now, as the CEO, I mean, you
 18 had been CEO of Eastern Health then for six
 19 months, seven months, you had been CEO of the
 20 predecessor corporation, Health Care
 21 Corporation for about five years?
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Were you at all surprised or, and raise your

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1 eyebrows that someone was now saying in the
 2 fall of 2005, well, two persons in authority,
 3 really, are saying that in this proposal that
 4 they were identifying requirements needed to
 5 implement a complete quality assurance program
 6 for the immunohistochemistry lab? I mean, you
 7 know, as the CEO wondering, well, why didn't
 8 we have that six months ago? Did that cross
 9 your mind at the time?
 10 MR. TILLEY:
 11 A. I'm making an assumption here, but points
 12 during this process there was references to
 13 proficiency processes, so my assumption would
 14 be this would be a different approach in terms
 15 of the direction that the lab would normally
 16 take as opposed to the typical traditional
 17 quality assurance program that it had.
 18 COFFEY, Q.C.:
 19 Q. Which was what?
 20 MR. TILLEY:
 21 A. I can't speak to it in detail.
 22 COFFEY, Q.C.:
 23 Q. Did you know if they really, if they had one
 24 at all?
 25 MR. TILLEY:

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1 A. Well, I would have expected them to have one,
 2 considering that it had been a priority for
 3 the organization.
 4 COFFEY, Q.C.:
 5 Q. And I'm not to be taken by that comment to
 6 suggesting that they didn't have one, I'm just
 7 asking you what your state of knowledge was
 8 about it in the years 2000 to 2005? Did you
 9 have any actual knowledge of it?
 10 MR. TILLEY:
 11 A. Not that I can pull out.
 12 COFFEY, Q.C.:
 13 Q. At the time the question had been raised with
 14 you and you wanted to know if there was one
 15 and, if so, what the details were, who would
 16 you have gone to?
 17 MR. TILLEY:
 18 A. I would have went through Dr. Williams.
 19 COFFEY, Q.C.:
 20 Q. Okay. So I'm sorry, so you interpreted this
 21 as the lab was taking a new direction in
 22 quality assurance?
 23 MR. TILLEY:
 24 A. Because there had been some references to how
 25 other labs were approaching this issue by

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1 using an external source, so that's how I'm
 2 interpreting that.
 3 COFFEY, Q.C.:
 4 Q. That would be outside agencies?
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Kind of an audit agency, as in auditing your
 9 work, as it were? Like, sending out your work
 10 to be looked at, as it were?
 11 MR. TILLEY:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. But this involves, I'm going to suggest to
 15 you, much more than that. You can look
 16 through it, but it's a rearrangement of, you
 17 know, personnel within the lab, putting on new
 18 people of different sorts, you know, people
 19 being, technologists being trained to review
 20 all patient and control slides at page 4 of
 21 the exhibit. I mean, there's--if you just
 22 look--perhaps I should systematically go
 23 through this because if you look at page 2 of
 24 the exhibit--I'm sorry, page 3 of the exhibit,
 25 I apologize. The first recommendation under

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1 paragraph 2.1 is, is recommending "Most
 2 grossing/dissecting functions be performed by
 3 trained Technologists, (Pathologists'
 4 Assistants)," suggesting that up to that point
 5 in time there had been no pathologists'
 6 assistants. And "Purchase of gross workbench
 7 for the General site." Had the subject of
 8 pathologists' assistants come up before, do
 9 you know?
 10 MR. TILLEY:
 11 A. Yes, it had. I remember seeing in the Hay, H-
 12 A-Y operational review.
 13 COFFEY, Q.C.:
 14 Q. Yes, 2002 report?
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And yet, nothing--this is now--Hay had
 19 recommended it, in fact?
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Whatever one might feel about -
 24 MR. TILLEY:
 25 A. Yes, that process. And my recollection is

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1 that an alternative approach was pursued at
 2 that point in time with a higher level of
 3 staff in terms of training.
 4 COFFEY, Q.C.:
 5 Q. But pathologists' assistants would, in fact,
 6 be higher level trained, wouldn't they?
 7 MR. TILLEY:
 8 A. Okay. Sorry, I was looking at it the other
 9 way around.
 10 COFFEY, Q.C.:
 11 Q. So that your understanding is they were
 12 suggesting pathologists' assistants, the Hay
 13 Group were?
 14 MR. TILLEY:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. To alleviate some of the workload for
 18 pathologists, in fact?
 19 MR. TILLEY:
 20 A. No, I was actually thinking that they were
 21 doing a specific function, not the
 22 pathologists.
 23 COFFEY, Q.C.:
 24 Q. Okay. Pathology, that's -
 25 MR. TILLEY:

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1 A. I see pathologists now.
 2 COFFEY, Q.C.:
 3 Q. - pathology assistants -
 4 MR. TILLEY:
 5 A. I was thinking pathology, so I--yeah, I'm with
 6 you now.
 7 COFFEY, Q.C.:
 8 Q. Okay. So on this certainly you'd been aware
 9 in 2002 the Hay Report had made reference to
 10 pathologists' assistants or pathology
 11 assistants being desirable. Now Mr. Gulliver
 12 and Dr. Cook were putting it ahead or
 13 advocating it in the fall of 2005. Are you
 14 able to tell the Commissioner, do you have any
 15 knowledge of why it hadn't occurred in the
 16 intervening years?
 17 MR. TILLEY:
 18 A. The only thing I can recall is an update of
 19 the status report to the Hay recommendations
 20 and what rings a bell is that they were using
 21 some form of technologists to take on that
 22 role and there was something about that level
 23 of expertise not being immediately available.
 24 COFFEY, Q.C.:
 25 Q. Okay. And the idea being in terms of the last

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1 comment, I take it, is pathology assistants or
 2 assistants do require more training?
 3 MR. TILLEY:
 4 A. I'm sorry, I'm not knowledgeable -
 5 COFFEY, Q.C.:
 6 Q. The pathologist -
 7 MR. TILLEY:
 8 A. - to say yes, but -
 9 COFFEY, Q.C.:
 10 Q. Oh, you don't know, okay.
 11 MR. TILLEY:
 12 A. - I don't disagree with you.
 13 COFFEY, Q.C.:
 14 Q. Okay. Well, just it seems to be implicit in
 15 your last comment, but, that they require
 16 more--or a level of expertise that's not
 17 readily available. Look at page 4 of the
 18 exhibit. A recommendation here that "Three
 19 full-time equivalents be dedicated solely to
 20 the immunohistochemistry section of the lab."
 21 "Technologists be trained to review all
 22 patient control slides before release to the
 23 pathologist." "Install third instrument to
 24 deal with patient volume increases and new
 25 requirements for additional control slides."

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1 That's very operational, isn't it?
 2 MR. TILLEY:
 3 A. Um-hm.
 4 COFFEY, Q.C.:
 5 Q. And this thing goes on in a very operational
 6 way, in some instances, to spell out very
 7 particular things. Overall, I mean, having
 8 read this in late October, 2005, you know,
 9 what if anything occurred to you about, well,
 10 if we got to do all this, what, if any,
 11 implications does that have for what was there
 12 before or what still is there because the
 13 changes hadn't occurred at that point?
 14 MR. TILLEY:
 15 A. No, this is in 2005.
 16 COFFEY, Q.C.:
 17 Q. I apologize. '05.
 18 MR. TILLEY:
 19 A. '05.
 20 COFFEY, Q.C.:
 21 Q. Having read this in '05.
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. You're CEO and you're reading this.

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1 MR. TILLEY:
 2 A. This is a lot of material. Obviously they've
 3 got some basis for the recommendations in
 4 here, including the external reviews. It is
 5 certainly more material than I would have
 6 normally received for any particular
 7 initiatives that might be happening within the
 8 organization. Again, the focus to Dr.
 9 Williams would be, you know, we're supportive
 10 of anything that would take us into becoming
 11 one of those organizations that would be so-
 12 called "gold standard" in the country.
 13 THE COMMISSIONER:
 14 Q. What makes a gold standard -
 15 MR. TILLEY:
 16 A. Pardon?
 17 THE COMMISSIONER:
 18 Q. What makes Mount Sinai a gold standard?
 19 MR. TILLEY:
 20 A. Well, I suspect it's a combination of things,
 21 Commissioner, and it's a very good point.
 22 First of all, they probably have the volume
 23 and the volume can bring with it a level of
 24 expertise and resources that you might not
 25 find in centres that provide lesser volume.

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1 And you've probably struck on an issue that
 2 every organization in the country has had to
 3 deal with regardless of what service it is and
 4 that's the question of quality versus
 5 quantity. But, when I looked at the
 6 recommendations from -
 7 THE COMMISSIONER:
 8 Q. And quality versus quantity, the implication
 9 is -
 10 MR. TILLEY:
 11 A. If you don't -
 12 THE COMMISSIONER:
 13 Q. - quantity brings quality?
 14 MR. TILLEY:
 15 A. Exactly.
 16 THE COMMISSIONER:
 17 Q. Um-hm.
 18 MR. TILLEY:
 19 A. And there's lots of discussion nationally that
 20 I've been aware of and also locally I've
 21 talked about it when I used to work here about
 22 services that are not of high volume and
 23 question whether the volume, in fact, could
 24 allow the people to maintain their level of
 25 expertise.

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1 THE COMMISSIONER:
 2 Q. Okay. So is there a valid question to whether
 3 or not certain kinds of testing should be done
 4 either within your lab or within the province?
 5 MR. TILLEY:
 6 A. I think that is a question that every service
 7 in health needs to be looked at.
 8 THE COMMISSIONER:
 9 Q. Now, back to gold standard.
 10 MR. TILLEY:
 11 A. Yes.
 12 THE COMMISSIONER:
 13 Q. Is that a sort of just because people
 14 generally look to it, they decided it's the
 15 gold standard or -
 16 MR. TILLEY:
 17 A. No.
 18 THE COMMISSIONER:
 19 Q. - does Mount Sinai do something which gives it
 20 a legitimacy to that claim and if so, what do
 21 they do?
 22 MR. TILLEY:
 23 A. I'm not a good expert to be able to answer
 24 your question, but I'll try. Because of the
 25 volume they're able to dedicate pathologists

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1 and technologists solely to this function.
 2 They're probably able to do more research than
 3 other places in the country, and that research
 4 allows them to have a better appreciation for
 5 what's happening elsewhere in the world, and
 6 they're learning from those experiences to
 7 implement here. Mount Sinai was the
 8 organization that Dr. Bell had reinforced to
 9 me, and he works in the university health
 10 network in Ontario, which is, I guess, one of
 11 the sister organizations for -- when compared
 12 to Mount Sinai. So there's a matter of having
 13 enough of a volume to maintain a level of
 14 expertise and that also drives research,
 15 funding, and when people are able to focus in
 16 on a particular area, they obviously become
 17 more adept at what their responsibilities are.
 18 Sometimes in health care, we have this
 19 perception that if you are a doctor, you're
 20 able to deal with every issue that that doctor
 21 is trained to do. Certainly if you're any
 22 profession, it is clear that the more one does
 23 of any particular thing, the more skilled they
 24 would be at performing it.
 25 THE COMMISSIONER:

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1 Q. Okay. So do I take it from that, that gold
 2 standard means nothing except that people have
 3 a respect for the reputation of Mount Sinai,
 4 which they get because they have expertise
 5 within their organization. That expertise
 6 arises out of the fact, no doubt, because of
 7 the people who are there, but also because
 8 they do a volume of work which enables them to
 9 maintain that expertise and there's research
 10 done within their operation?
 11 MR. TILLEY:
 12 A. That's a good summary.
 13 THE COMMISSIONER:
 14 Q. Okay. Now can we just for a minute -- can you
 15 tell me whether or not within Eastern Health
 16 during your time there has been any discussion
 17 about whether or not certain kinds of testing
 18 should or should not be done within your
 19 operation?
 20 MR. TILLEY:
 21 A. Two examples that are not directly on the
 22 point, but they're ones that just popped into
 23 my mind.
 24 THE COMMISSIONER:
 25 Q. Okay.

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1 MR. TILLEY:
 2 A. When I was Chief Executive Officer of the
 3 Janeway, the cardiac surgeon came forward and
 4 said he was moving to Ottawa because he felt
 5 there wasn't enough volume in St. John's for
 6 the province to be able to maintain his
 7 skillset, and, in fact, from an adverse
 8 outcome perspective, in Winnipeg Children's
 9 Hospital several years later, they actually
 10 ran into quite a significant issue with
 11 regards to cardiac surgery for neonates.
 12 Another one that comes to mind is more recent,
 13 but not as technical, but equally important,
 14 the province has a major issue with kidney
 15 disease and to that end the need for dialysis
 16 service is significant.
 17 COFFEY, Q.C.:
 18 Q. It's just the --
 19 THE COMMISSIONER:
 20 Q. Seems to be echoing. Carry on.
 21 MR. TILLEY:
 22 A. I thought someone was talking to me.
 23 COFFEY, Q.C.:
 24 Q. It hasn't come to that yet. That happens at
 25 two in the morning, trust me. Go ahead, I'm

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1 sorry, Mr. Tilley.
 2 MR. TILLEY:
 3 A. Dialysis -- the need for dialysis has been
 4 growing in this province quite significantly.
 5 The province commissioned a group of experts
 6 to give it advice in terms of what would be an
 7 appropriate minimum number of patients to set
 8 up a dialysis service in a particular area.
 9 THE COMMISSIONER:
 10 Q. Uh-hm.
 11 MR. TILLEY:
 12 A. And my recollection is that that was in the
 13 vicinity of a minimum of ten patients.
 14 Clearly in this province there are dialysis
 15 services that have much more than ten, but
 16 there's also some that have fewer than ten.
 17 So, you know, the question is there are people
 18 that turn their minds to that -- now it's an
 19 expert opinion. I've asked that question of
 20 my counterparts that have spoken throughout
 21 the country and they said there are services
 22 for dialysis that they have with less than
 23 ten. So, you know, it's an expert saying
 24 that. Recently I reviewed a strategic
 25 document from one of the hospitals in Toronto.

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1 They don't call them regional health
 2 authorities, but a multi-site complex, and
 3 they had made a specific statement in their
 4 document to say the connection that they will
 5 not sacrifice quality for trade off of
 6 quantity, and I sense that they were getting a
 7 lot of pull, particularly from their outlying
 8 centres, to put in some services, but they had
 9 taken a position on it. Now to say that
 10 there's one definition to apply to all would
 11 be incorrect. Each situation needs to be
 12 looked at in its own merits, but there is, I
 13 believe, an issue that's national in nature
 14 that needs to be explored.
 15 COFFEY, Q.C.:
 16 Q. It didn't come up, I take it, within your
 17 organization in terms of the clinical
 18 laboratory?
 19 MR. TILLEY:
 20 A. No, it did not.
 21 COFFEY, Q.C.:
 22 Q. At no point when this was going on, this
 23 ER/PR, that you voiced the concern about,
 24 like, should we be involved at all in this?
 25 MR. TILLEY:

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1 A. No.
 2 COFFEY, Q.C.:
 3 Q. If we could look, please, at Exhibit P-088.
 4 Now this is a series of e-mails. The one
 5 right here, sir, I'm just going to scroll down
 6 here a bit, it's an e-mail from Dan Boone to
 7 Heather Predham, Thursday, October 6th, 2005,
 8 at 9:52 a.m. The subject is once again,
 9 "ER/PR testing", and it's forwarding that as
 10 being the subject matter, and it says,
 11 "Heather, as per my voice mail, I have
 12 concerns with referring to a quality review in
 13 correspondence and with characterizing the
 14 retesting of samples as part of the quality
 15 review. As I understand it, the retesting was
 16 done from a patient care perspective. I also
 17 would like to reconsider the necessity of
 18 referring to that one patient whose test
 19 results started it", and then could -- there
 20 is then an e-mail from Heather Predham to
 21 Patricia Pilgrim and Dianne Smith, October
 22 6th, 2005, 10:14 a.m. She says, "Hi, here's
 23 Dan's feedback. I figure we might as well say
 24 quality review since Dr. Williams has been
 25 saying it all along. How about this", and

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1 then she writes, "Recently it was discovered
 2 that samples tested in 2002 with the Dako
 3 System and reported as ER/PR negative were
 4 retested with the Ventana System and now
 5 reported as ER/PR positive. A summary search
 6 indicates Tamoxifen may benefit a patient up
 7 to ten years after diagnosis. It was felt
 8 important to retesting all samples determined
 9 to be negative for ER/PR. I checked with Dan
 10 and he's okay with this", signed Heather. Now
 11 I appreciate you're not the originator or
 12 recipient of these, but in the period where
 13 you're talking to your fellow CEOs early
 14 October, 2005, what was your understanding in
 15 terms of -- this refers to, I believe, Mr.
 16 Boone has said he has concerns about referring
 17 to a quality review in correspondence,
 18 suggesting a letter of some sort, and with
 19 characterizing the retesting of samples,
 20 presumably at Mount Sinai, as part of the
 21 quality review. Were you -- did you have any
 22 knowledge at the time that Mr. Boone was
 23 involved in this matter, input into a letter?
 24 MR. TILLEY:
 25 A. I knew that Mr. Boone had been involved in a

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1 meeting that I had attended.
 2 COFFEY, Q.C.:
 3 Q. When was that --
 4 MR. TILLEY:
 5 A. But I'm not familiar with this issue --
 6 COFFEY, Q.C.:
 7 Q. That was back in the summer, I take it?
 8 MR. TILLEY:
 9 A. Yes, right.
 10 COFFEY, Q.C.:
 11 Q. Okay. Summer of '05?
 12 MR. TILLEY:
 13 A. Yeah. My own legal opinion would be that
 14 would be splitting a hair, but I'm not sure if
 15 it means anything.
 16 COFFEY, Q.C.:
 17 Q. What I'm asking you is in terms of -- in early
 18 October of '05, were you aware that Mr. Boone
 19 was being consulted by some of your
 20 subordinates about drafting of letters and --
 21 MR. TILLEY:
 22 A. This letter was for patients, was it?
 23 COFFEY, Q.C.:
 24 Q. No, it's -- it could be for patients, it could
 25 be for --

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1 MR. TILLEY:
 2 A. No, I --
 3 COFFEY, Q.C.:
 4 Q. It could as well be for the physicians too,
 5 the NLMA, but he's being consulted about a
 6 letter to one or the other.
 7 MR. TILLEY:
 8 A. You know, I don't dispute the staff's wish to
 9 get legal input, but I can't say that I was
 10 specifically aware about this issue.
 11 COFFEY, Q.C.:
 12 Q. They certainly weren't doing so at your
 13 direction that you can recall?
 14 MR. TILLEY:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. Back in the summer when Mr. Boone had attended
 18 a meeting you had been also in attendance at,
 19 what was that meeting about and what was his
 20 involvement or role there?
 21 MR. TILLEY:
 22 A. Well, the meeting that I'm thinking about was
 23 August 1st.
 24 COFFEY, Q.C.:
 25 Q. Okay, that's the big meeting, is it?

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1 MR. TILLEY:
 2 A. Yes, "the" meeting.
 3 COFFEY, Q.C.:
 4 Q. Yes, okay.
 5 MR. TILLEY:
 6 A. I don't recall him playing or saying very
 7 much, if anything. In fact, was more brought
 8 in, observing or listening to the discussions.
 9 I don't recall him making any specific
 10 comments.
 11 COFFEY, Q.C.:
 12 Q. And what was his role there?
 13 MR. TILLEY:
 14 A. Well --
 15 COFFEY, Q.C.:
 16 Q. Had you asked that he come?
 17 MR. TILLEY:
 18 A. Well, I wouldn't have asked, but I would have
 19 liked to have thought that somebody would have
 20 asked me if it was okay for him to come, and
 21 knowing the complexity of this issue, I
 22 certainly didn't see any reason why he
 23 shouldn't, just one more contributor in the
 24 process.
 25 COFFEY, Q.C.:

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1 Q. Well, while we're on the topic of a lawyer and
 2 legal matters, in the summer of 2005 in your
 3 discussions with Mr. Ottenheimer, can you tell
 4 us whether or not the circumstances that had
 5 occurred in Labrador concerning a class action
 6 up there ever came up? Do you recall when we
 7 looked at an e-mail that in July -- on the
 8 morning of July 19th, Heather Predham's e-
 9 mail.
 10 MR. TILLEY:
 11 A. Yes, a reference to Labrador.
 12 COFFEY, Q.C.:
 13 Q. Labrador and a class action.
 14 MR. TILLEY:
 15 A. The 19th, was it?
 16 COFFEY, Q.C.:
 17 Q. Yes, the 19th, just to help you --
 18 MR. TILLEY:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. Because I want to be --
 22 MR. TILLEY:
 23 A. I'm familiar, Mr. Coffey, that's okay. There
 24 would have been a conversation that Dr.
 25 Williams had with me, now that I recall our

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1 earlier discussions with legal counsel.
 2 COFFEY, Q.C.:
 3 Q. That's P-073, actually, just so -- under the
 4 paragraph, "As a bit of background", and goes
 5 on from there. We looked at that earlier.
 6 MR. TILLEY:
 7 A. Uh-hm.
 8 COFFEY, Q.C.:
 9 Q. So this apparently was a live issue in your
 10 organization amongst other people, amongst Dr.
 11 Williams and Dr. Cook, and Ms. Bonnell, and
 12 Heather Predham, on the morning of July 19th,
 13 that Tuesday morning, before you spoke to Mr.
 14 Ottenheimer.
 15 MR. TILLEY:
 16 A. That was the day before, yes.
 17 COFFEY, Q.C.:
 18 Q. No, actually, this would be the day you spoke
 19 to Mr. Ottenheimer, July 19th, that Tuesday.
 20 MR. TILLEY:
 21 A. Oh, yes, okay.
 22 COFFEY, Q.C.:
 23 Q. You've told us Mr. Ottenheimer --
 24 MR. TILLEY:
 25 A. I'm with you now, yeah.

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1 COFFEY, Q.C.:
 2 Q. And then the meeting occurred two days later?
 3 MR. TILLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. So did this topic come up?
 7 MR. TILLEY:
 8 A. I certainly don't recall any reference to it
 9 in the telephone conversation.
 10 COFFEY, Q.C.:
 11 Q. How about during the meeting?
 12 MR. TILLEY:
 13 A. Pardon?
 14 COFFEY, Q.C.:
 15 Q. How about during the meeting?
 16 MR. TILLEY:
 17 A. I was just sort of looking for my notes here
 18 about that meeting, but -- nor do I recall it
 19 coming up there, but I stand to be corrected.
 20 The other thing that sort of occurs to me is
 21 that we were talking about letter for some
 22 time afterwards, so, you know, that in and of
 23 itself certainly would have been a decisive
 24 factor. I do remember in terms of a letter
 25 thinking that it doesn't seem to be the right

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1 way to notify an individual of the issue that
 2 we were dealing with. I was always wondering
 3 what someone -the impact on a person who would
 4 open up that envelope and read that. So to
 5 that end, I was a telephone advocate.
 6 COFFEY, Q.C.:
 7 Q. But --
 8 MR. TILLEY:
 9 A. And -- I think I'm getting close to it, sir,
 10 if this is in numerical order -- sorry,
 11 chronological order, but maybe it's not. No,
 12 not there. Anyway, I have no recollection
 13 that there's any reference in my meeting notes
 14 to the issue about what happened in Labrador
 15 in light of that organization choosing to send
 16 out letters.
 17 COFFEY, Q.C.:
 18 Q. Okay, if I might, do you know if it was talked
 19 about in the context of -- at that meeting of
 20 -- I'll say, joked about?
 21 MR. TILLEY:
 22 A. Joked about?
 23 COFFEY, Q.C.:
 24 Q. Yes, in the sense of Mr. Crosbie's name being
 25 mentioned?

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1 MR. TILLEY:
 2 A. As in Ches or --
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. TILLEY:
 6 A. No, and I don't know it would be --
 7 COFFEY, Q.C.:
 8 Q. I just -- I'm aware of other participated --
 9 MR. TILLEY:
 10 A. I don't think it was the type of conversation
 11 that lend itself to jokes, to be quite honest
 12 with you.
 13 COFFEY, Q.C.:
 14 Q. But that doesn't assist you, and you may or
 15 may not have been in the room at the time.
 16 MR. TILLEY:
 17 A. Possibly not, but I don't recall that item
 18 being talked about.
 19 COFFEY, Q.C.:
 20 Q. Sir, so you don't ever recall that coming up
 21 at all in your conversations with Mr.
 22 Ottenheimer?
 23 MR. TILLEY:
 24 A. No.
 25 COFFEY, Q.C.:

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1 Q. Okay. I'm sorry, you did -- you were about to
 2 tell us, though, you do recall a conversation
 3 with Dr. Williams about --
 4 MR. TILLEY:
 5 A. That note that we referred to earlier today
 6 that had a split page with Susan B. and Bob W
 7 --
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 MR. TILLEY:
 11 A. We did reference there some input of legal,
 12 and I did have it, but since misplaced it, so
 13 I'm just trying to connect the dots here. Dr.
 14 Williams had gotten --
 15 COFFEY, Q.C.:
 16 Q. It's Exhibit 0329, actually, page one. You
 17 can see it there on the --
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. So --
 22 MR. TILLEY:
 23 A. There's a comment there about legal counsel
 24 cautions release pending full results. So I'm
 25 assuming that deals with the press release.

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1 COFFEY, Q.C.:
 2 Q. Or could it be -- is it press release or --
 3 MR. TILLEY:
 4 A. That's where I'd typically fit that word, but,
 5 you know, that issue of the letter to Heather
 6 Predham or from Heather Predham, I recognize,
 7 but I don't recall much discussion about that,
 8 and to be quite honest with you and all due
 9 respect, legal input is but one factor that
 10 might be referred to, but certainly in and of
 11 itself wouldn't be an overriding issue.
 12 COFFEY, Q.C.:
 13 Q. Well, if someone such as Mr. Boone was telling
 14 you or advising you of one thing, and you say
 15 it's one factor, and you chose to ignore it --
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. Does that have any potential ramifications for
 20 your organization?
 21 MR. TILLEY:
 22 A. Ramifications in terms of?
 23 COFFEY, Q.C.:
 24 Q. Well, at the time he was -- was he
 25 representing your organization?

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1 MR. TILLEY:
 2 A. No, he was representing HIROC, the Health
 3 Insurance Reciprocal.
 4 COFFEY, Q.C.:
 5 Q. Which you, in fact, at the time was a member
 6 of yourself?
 7 MR. TILLEY:
 8 A. I was actually on the Board of Directors for
 9 maybe twelve months.
 10 COFFEY, Q.C.:
 11 Q. At this time?
 12 MR. TILLEY:
 13 A. Yes, it was during this time.
 14 COFFEY, Q.C.:
 15 Q. Yes, and do you recall exactly when it was you
 16 were on the Board?
 17 MR. TILLEY:
 18 A. Mid 70s -- sorry, mid 2006 to 2007.
 19 COFFEY, Q.C.:
 20 Q. So at this point in '05, you wouldn't have
 21 been on the Board?
 22 MR. TILLEY:
 23 A. That's true. If my CV could be pulled up.
 24 COFFEY, Q.C.:
 25 Q. Sure.

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1 MR. TILLEY:
 2 A. Hopefully, that can be a memory jogger. I
 3 certainly wasn't there very long.
 4 COFFEY, Q.C.:
 5 Q. P-0315, please, page five.
 6 MR. TILLEY:
 7 A. 2006/2007.
 8 COFFEY, Q.C.:
 9 Q. So at that point, you weren't on the Board in
 10 the fall?
 11 MR. TILLEY:
 12 A. No, no, and Commissioner, it's a reciprocal,
 13 it's like a cooperative, so I was invited to
 14 participate because they were looking for a
 15 representative from the Atlantic Region, and
 16 as I look at that organization, my interest in
 17 joining them was not on the insurance bit
 18 because I know very little about insurance,
 19 but they do a lot in the way of risk
 20 management, which is guidance in terms of risk
 21 management programs to identify and evaluate
 22 and control risk.
 23 COFFEY, Q.C.:
 24 Q. So if I could come then back to if Mr. Boone
 25 was telling your organization a certain thing

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1 or advising a certain thing --
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. In the fall of 2005 at this point in October
 6 of 2005, before any lawsuit was initiated --
 7 MR. TILLEY:
 8 A. Yes, that was with regards to the reference to
 9 quality review versus --
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. TILLEY:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. He's doing that, and we're going to see
 16 another reference maybe before the end of the
 17 day.
 18 MR. TILLEY:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. if you chose -- if your organization chose not
 22 to take his advice and it resulted in some
 23 unfortunate consequences legally for you, did
 24 that have any ramifications for your
 25 organization?

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1 MR. TILLEY:
 2 A. It was never an issue that I had given any
 3 thought to.
 4 COFFEY, Q.C.:
 5 Q. Do you know if your subordinates were giving
 6 it any thought?
 7 MR. TILLEY:
 8 A. No.
 9 COFFEY, Q.C.:
 10 Q. If you could look, please, at Exhibit P-0307.
 11 Again, Mr. Tilley, I apologize, this was not
 12 sent to nor originated from you, but some of
 13 the subject matter I wanted to ask you about.
 14 It's a short e-mail, October 14th, 2005, 3:10
 15 p.m. from John Abbott to Josephine Cheeseman.
 16 It says, "The issues around communications
 17 related to patient safety issues, example,
 18 current ER/PR breast cancer testing, is there
 19 an established protocol as to when patients
 20 and the media are informed; what is the
 21 relationship between the Department and the
 22 RIHA", which would be the regional integrated
 23 health authorities, "when these issues arise,
 24 etc. Carolyn will be able to help on this
 25 question", signed John Abbott. They're

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1 preparing for a communications retreat, when
 2 you look at the e-mail below that, okay.
 3 MR. TILLEY:
 4 A. Yeah, and I'm sorry, I don't know Josephine
 5 Cheeseman.
 6 COFFEY, Q.C.:
 7 Q. She's Carolyn's boss, apparently.
 8 MR. TILLEY:
 9 A. Oh, okay.
 10 COFFEY, Q.C.:
 11 Q. At the time. The -- on this issue, the topic,
 12 the protocol, if there was one -- John Abbott,
 13 who is the Deputy Minister of Health is asking
 14 is there an established protocol as to when
 15 the patients and the media are informed; what
 16 is the relationship between the department and
 17 the RIHA's when these issues arise, etc, which
 18 is what the Commissioner -- in fact, one of
 19 the topics she was asking you about earlier,
 20 the interaction between yourselves.
 21 MR. TILLEY:
 22 A. I understand it more clearly now.
 23 COFFEY, Q.C.:
 24 Q. So at the time, you know, this is the middle
 25 of October of '05, I take it there was no

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1 established protocol from your perspective as
 2 to when patients and the media would be
 3 informed?
 4 MR. TILLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. And the relationship between the department
 8 and the RIHA's when these issues arise, these
 9 issues being -the example being current ER/PR
 10 breast cancer testing, patient safety issues,
 11 would you at the time have been able to, do
 12 you think, adequately explain the relationship
 13 between the department and the RIHA's, or
 14 would you have been left with what you
 15 explained to the Commissioner?
 16 MR. TILLEY:
 17 A. I wouldn't have been able to draw a line down
 18 other than to say that we had evolved to the
 19 process of being a very integrated -- very
 20 integrated organizations.
 21 COFFEY, Q.C.:
 22 Q. That's the Department of Health --
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. And Eastern Health?
 2 MR. TILLEY:
 3 A. And Eastern Health.
 4 COFFEY, Q.C.:
 5 Q. Exhibit P-0352, please. Now this is an e-mail
 6 from Joyce Penney, who was your administrative
 7 assistant at the time, October 14th, 2005,
 8 4:51 p.m. to Dr. Williams, Heather Predham,
 9 Denise Dunn, and Patricia Pilgrim. The subject
 10 is "potential litigation resulting from ER/PR
 11 breast cancer testing", forwarded on behalf of
 12 George Tilley, and it says, "Good afternoon,
 13 received from the CEO's Office, Friday,
 14 October 14th, 2005, via fax from Roebathan
 15 McKay and Marshall. Please review
 16 correspondence. Advise to George Tilley
 17 accordingly", and there's an exclamation mark.
 18 "Thanks, Joyce". Look to the next page, sir,
 19 page two, this is on Roebathan McKay Marshall
 20 letterhead, and it's a letter of that October
 21 14th date to yourself, signed by Lois Skanes,
 22 who is a solicitor, and this is advising
 23 yourself and the authority that they have been
 24 retained by two breast cancer patients under
 25 the care of Eastern Health Authority to

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1 investigate inaccuracies discovered in the
 2 ER/PR receptor testing done at the lab at the
 3 Health Sciences Centre, and they wish to
 4 request a meeting. They ask whether you're
 5 agreeable to such. So was this the first
 6 notification that legal proceedings would be
 7 initiated?
 8 MR. TILLEY:
 9 A. The first formal notification, yes.
 10 COFFEY, Q.C.:
 11 Q. It doesn't actually say they're going to
 12 initiate it. It says actually "we've been
 13 retained to look into it".
 14 MR. TILLEY:
 15 A. Right.
 16 COFFEY, Q.C.:
 17 Q. Now if we could look, please, at Exhibit 0353.
 18 This is an e-mail from Heather Predham,
 19 Monday, October 17th, 2005, at 7:51 a.m. to a
 20 number of individuals. Joyce Penney is listed
 21 there. You're not. Do you see that?
 22 MR. TILLEY:
 23 A. In terms of the reply?
 24 COFFEY, Q.C.:
 25 Q. Yeah, from Heather Predham to -- the top of

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1 the page.
 2 MR. TILLEY:
 3 A. Yes, okay.
 4 COFFEY, Q.C.:
 5 Q. Sending it to Joyce Penney, would that be the
 6 equivalent of sending it to yourself?
 7 MR. TILLEY:
 8 A. Joyce was my executive assistant. She
 9 certainly worked in the next office to me. I
 10 guess, for the file, it certainly would be
 11 there, but why I would be excluded -- was I
 12 contained in the first one that was sent out?
 13 COFFEY, Q.C.:
 14 Q. No, it's being sent -- Ms. Penney had sent it
 15 on your behalf.
 16 MR. TILLEY:
 17 A. Okay, so I guess she did a "reply all".
 18 COFFEY, Q.C.:
 19 Q. And Ms. Predham writes, "I have forwarded the
 20 letter on to Dan Boone. He will reply on our
 21 behalf. I'm sure I'll be in touch".
 22 MR. TILLEY:
 23 A. Uh-hm.
 24 COFFEY, Q.C.:
 25 Q. So I take it -- is this a normal routine that

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1 -- I suppose it's an implicit threat of a
 2 lawsuit, you'd send it on to HIROC?
 3 MR. TILLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Or HIROC's lawyer. Mr. Tilley, does that
 7 change anything within Eastern Health in terms
 8 of the way matters are addressed or handled?
 9 MR. TILLEY:
 10 A. Well, I think it just heightens the
 11 sensitivity around the fact that we are going
 12 through litigation, and that -- I know when we
 13 got through to a year or two later in the
 14 certification process, it became more of an
 15 issue.
 16 COFFEY, Q.C.:
 17 Q. I'm talking about just generally?
 18 MR. TILLEY:
 19 A. Generally?
 20 COFFEY, Q.C.:
 21 Q. Yes. I mean, you --
 22 MR. TILLEY:
 23 A. We don't do anything different inside the
 24 organization. I suspect that --
 25 COFFEY, Q.C.:

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1 Q. How about your dealings with people outside
 2 the organization in relation to the threat of
 3 a lawsuit or the actual lawsuit?
 4 MR. TILLEY:
 5 A. Outside as in stakeholders, or the public at
 6 large?
 7 COFFEY, Q.C.:
 8 Q. Or the claimants, or lawyers for the
 9 claimants?
 10 MR. TILLEY:
 11 A. No, that would not be a factor.
 12 COFFEY, Q.C.:
 13 Q. Certainly the idea of HIROC's lawyer replying
 14 on your behalf, that was an established
 15 procedure?
 16 MR. TILLEY:
 17 A. I would think so.
 18 COFFEY, Q.C.:
 19 Q. If we could look, please, at Exhibit P-0308.
 20 This is an e-mail from Heather Predham to Kara
 21 Laing, Patricia Pilgrim, Dr. Robert Williams,
 22 and Susan Bonnell. The subject is "patient
 23 letter", October 18th, 2005, 1:12 p.m. She
 24 says, "Hi, I've attached a draft letter with
 25 the suggested changes", and the icon is

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1 labelled patient letter.doc. "Before we send
 2 it out, we will need to consider the
 3 following", and she refers to the patients
 4 from St. Pierre and concerns about them,
 5 patients in nursing homes and personal care
 6 homes, and can we send letters to the Medical
 7 Director there -- in terms of St. Pierre, I
 8 should say, that she has said, "Is there a
 9 central medical contact we can discuss this
 10 issue with, and we need to have the letter
 11 translated. Can we send the letters to the
 12 medical directors of nursing care boards
 13 and/or operator of a personal care home for
 14 appropriate distribution, i.e. next of kin;
 15 will we send this letter out via registered
 16 mail through one central area, such as QSI. We
 17 can then monitor the undeliverable mail", and
 18 she goes on to say, "I guess we also have to
 19 remember that we will get a negative reaction
 20 from the letters, everything from timing,
 21 upsetting people with no information, and, of
 22 course, we will send some unintentionally to
 23 people who have died. I guess we should
 24 compare the mailing list to the obituaries to
 25 ensure we don't send letters to the recently

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1 deceased. Finally, I think we should be aware
 2 that we will not be able to notify everyone.
 3 Several on the list have moved, and we have no
 4 other contact information. I'm going to send
 5 this on to Dan Boone as well. I'm not sure
 6 how HIROC will feel about notifying people at
 7 this point in time, and whether the media
 8 attention will make any difference. Let me
 9 know what changes you want made. Heather".
 10 Now the only person in senior management role
 11 who's not -- this is not sent to is you in the
 12 sense of dealing with this issue.
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Do you know why it wasn't sent to you?
 17 MR. TILLEY:
 18 A. Well, I can't speak for the author, but other
 19 than to say that Eastern Health is a very
 20 large organization that was under massive
 21 change, and whether they were looking out for
 22 my interests, I have no idea, in terms of my
 23 availability.
 24 COFFEY, Q.C.:
 25 Q. Okay, but your point person on this was Dr.

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1 Williams?
 2 MR. TILLEY:
 3 A. Uh-hm.
 4 COFFEY, Q.C.:
 5 Q. And he is certainly a recipient of it.
 6 MR. TILLEY:
 7 A. Uh-hm.
 8 COFFEY, Q.C.:
 9 Q. So if -- I take it you would have been relying
 10 upon him if you had to be consulted or
 11 bringing it to your attention?
 12 MR. TILLEY:
 13 A. Yes, or Pat Pilgrim.
 14 COFFEY, Q.C.:
 15 Q. Or Pat --
 16 MR. TILLEY:
 17 A. Or Susan Bonnell, I suppose, either one of
 18 them could.
 19 COFFEY, Q.C.:
 20 Q. Now in terms of this, you know, at the time
 21 would it have made any difference to you what
 22 HIROC thought or felt?
 23 MR. TILLEY:
 24 A. No, they're just one factor here, and with all
 25 due respect, you know, I think we would be

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1 looking at multiple issues other than just
 2 their opinion.
 3 COFFEY, Q.C.:
 4 Q. Certainly I'm going to suggest to you by this
 5 point in time, this process was fairly far
 6 along.
 7 MR. TILLEY:
 8 A. Uh-hm.
 9 COFFEY, Q.C.:
 10 Q. Wasn't it?
 11 MR. TILLEY:
 12 A. That's correct.
 13 COFFEY, Q.C.:
 14 Q. And up to this point in time, October 18th,
 15 midday, your organization was about to go with
 16 this, send the letters, weren't they?
 17 MR. TILLEY:
 18 A. Midday on the 14th?
 19 COFFEY, Q.C.:
 20 Q. On the 18th.
 21 MR. TILLEY:
 22 A. On the 18th?
 23 COFFEY, Q.C.:
 24 Q. This is the 18th.
 25 MR. TILLEY:

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1 A. I can't --
 2 COFFEY, Q.C.:
 3 Q. Or certainly nearing getting ready to go?
 4 MR. TILLEY:
 5 A. I don't have a recollection of how close that
 6 issue was at that time.
 7 COFFEY, Q.C.:
 8 Q. See the idea of sending out a letter now
 9 because, I mean, the department had been after
 10 you to do it in the summer, you'll recall
 11 that, throughout August and how that ended --
 12 we talked about that earlier today.
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Throughout August, I mean, the draft letter
 17 and so on.
 18 MR. TILLEY:
 19 A. Right, right.
 20 COFFEY, Q.C.:
 21 Q. The idea surfaced again in October after it
 22 went public, the idea of sending a letter to
 23 all patients.
 24 MR. TILLEY:
 25 A. Yes.

1 COFFEY, Q.C.:

2 Q. Who were actually being retested -- surface

3 again and it had evolved. I mean, Ms. Predham

4 is talking about translating letters going to

5 St. Pierre, do we send it to people in nursing

6 homes, who do we actually send it to, this is

7 fairly detailed.

8 MR. TILLEY:

9 A. Uh-hm.

10 COFFEY, Q.C.:

11 Q. So who was pushing this at this time, pushing

12 the idea of sending the letter?

13 MR. TILLEY:

14 A. I can't give you an answer to that.

15 COFFEY, Q.C.:

16 Q. You don't recall?

17 MR. TILLEY:

18 A. It's not coming to me.

19 THE COMMISSIONER:

20 Q. Mr. Coffey, when you get -- when you're

21 finished your thought, but when you get a

22 convenient place, we'll break for today.

23 COFFEY, Q.C.:

24 Q. Thank you, Commissioner. So when you -- were

25 you aware even it was going on?

1 CERTIFICATE

2 I, Judy Moss, hereby certify that the foregoing is

3 a true and correct transcript in the matter of the

4 Commission of Inquiry on Hormone Receptor Testing,

5 heard on the 17th day of April, A.D., 2008 before

6 the Honourable Justice Margaret A. Cameron,

7 Commissioner, at the Commission of Inquiry, St.

8 John's, Newfoundland and Labrador and was

9 transcribed by me to the best of my ability by

10 means of a sound apparatus.

11 Dated at St. John's, Newfoundland and Labrador

12 this 17th day of April, A.D., 2008

13 Judy Moss

1 MR. TILLEY:

2 A. I can't even say that with confidence, Mr.

3 Coffey.

4 COFFEY, Q.C.:

5 Q. Okay. If we could then, Commissioner, we

6 could take it up in the morning then.

7 THE COMMISSIONER:

8 Q. Okay, tomorrow at 9:30.

9 Upon conclusion.

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