COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 28, 2008

Appearances:

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

Rolf Pritchard/Megan Collins . . . . Her Majesty in Right of NL

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

Daniel Simmons/Sarah Learmonth . . . Eastern Regional Integrated
. . . . . Health Authority

Darlene Russell. . . . . Members of the Breast Cancer
. . . . . Testing Class Action

Mark Pike . . . . . NL Medical Association

Jennifer Newbury . . . . . Canadian Cancer Society (NL Division)
Stacey O'Dea . . . . . Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

LIST OF EXHIBITS

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THE COMMISSIONER:
Q. Please be seated. Ms. Chaytor.
CHAYTOR, Q.C.:
Q. Good morning, Commissioner. Our witness today is Louise Jones.
THE COMMISSIONER:
Q. All right.
CHAYTOR, Q.C.:
Q. Good morning, Ms. Jones.
MS. JONES:
A. Good morning, Sandy.
CHAYTOR, Q.C.:
Q. Commissioner, we have exhibits that we'll be referring to during Ms. Jones' evidence today. They are P-0029 through to P-0031 inclusive.
THE COMMISSIONER:
Q. Are they entered already?
CHAYTOR, Q.C.:
Q. No, those are new.
THE COMMISSIONER:
Q. P-0029 to 0031?
CHAYTOR, Q.C.:
Q. Yes, I can explain the low numbers, but -
THE COMMISSIONER:
Q. There were numbers earlier on that we -

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CHAYTOR, Q.C.:
Q. We skipped.
THE COMMISSIONER:
Q. - I had on a list but did not enter, so perhaps -
CHAYTOR, Q.C.:
Q. I think that might be it.
THE COMMISSIONER:
Q. Yes, all right then.
CHAYTOR, Q.C.:
Q. And then we have P-0700 through to P-0775 inclusive.
THE COMMISSIONER:
Q. Yes.
CHAYTOR, Q.C.:
Q. And also P-0486, P-0487 and P-0488.
THE COMMISSIONER:
Q. Okay, so that's P-0029 and 0031 or through 0031, so inclusive, P-0700 through to P-0775 and P-0486, 0487 and 0488 entered.
EXHIBITS ENTERED AND MARKED P-0029, P-0030, P-0031
EXHIBITS ENTERED AND MARKED P-0700 THROUGH P-0775
EXHIBITS ENTERED AND MARKED P-0486, P-0487, P-0488
CHAYTOR, Q.C.:
Q. Thank you.

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MS. LOUISE JONES, SWORN, EXAMINATION BY SANDRA CHAYTOR, Q.C.
REGISTRAR:
Q. Would you please state and spell your complete name for the Commission?
MS. JONES:
A. Louise Jones, L-O-U-I-S-E J-O-N-E-S.
REGISTRAR:
Q. Thank you.
CHAYTOR, Q.C.:
Q. Thank you, Ms. Jones. Perhaps we can begin please by telling us your educational and professional background?
MS. JONES:
A. My background is nursing. I have a Bachelor of Nursing and a Masters of Business Administration from Memorial University. I also am a nursing fellow with Wharton School of Management in the University of Pennsylvania and I have a Certified Health Executive from the Canadian College of Health Services accreditation.
CHAYTOR, Q.C.:
Q. And when did you finish your Bachelor of Nursing?

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MS. JONES:
A. 1976.
CHAYTOR, Q.C.:
Q. And your MBA?
MS. JONES:
A. 1990/91.
CHAYTOR, Q.C.:
Q. And what does it mean to be a nursing fellow?
MS. JONES:
A. It's a specialized program, residency program, short duration of six weeks in University of Pennsylvania.
CHAYTOR, Q.C.:
Q. And when did you complete that?
MS. JONES:
A. About 95/96 or so. That may not be the right years, but it's after my MBA.
CHAYTOR, Q.C.:
Q. Yes, okay, and you're also, I'm sorry, certified -
MS. JONES:
A. Certified Health Executive with the Canadian College of Health Services, administrator. No, Canadian College of--yeah, Health Service Executives.

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CHAYTOR, Q.C.:
Q. Okay, and what does that mean?
MS. JONES:
A. It really is, it's a designation that you can write exams and do assignments with respect to management, health service executive.
CHAYTOR, Q.C.:
Q. Okay, and when did you achieve that?
MS. JONES:
A. That was in the 1990s as well.
CHAYTOR, Q.C.:
Q. And take us then through your professional background, up to your current position.
MS. JONES:
A. I had started in 1976 where I had a number of frontline nursing positions, in terms of staff nurse. I moved from there to management of frontline manager in dialysis and emergency. After that, I moved into staff education roles at St. Clare's Hospital, and from there, in 1989, I moved into what would have been considered senior administration roles, first with the Grace Hospital as their director of nursing and then in 1995, with the coming together of the Health Care Corporation in St.

John's, I became the vice-president for patient care services within that organization from 1995 to 2005, and then in 2005, with the start of Eastern Health, I came into Eastern Health as a chief operating officer for adult acute care in St. John's and that was in April of 2005, and since July of this year, I've taken on the interim role, president and CEO for Eastern Health.

CHAYTOR, Q.C.:

Q. July of 2007?

MS. JONES:

A. July of 2007.

CHAYTOR, Q.C.:

Q. Okay, so you were ten years as the VP of patient care services?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. What did those duties involve?

MS. JONES:

A. Basically, in the Health Care Corporation of St. John's, we were a program managed organizations, so my portfolio throughout those years had many of the clinical services,

like the programs for critical care, emergency medicine surgery and some of the other programs from time to time, like rehabilitation, as well as child health so at various points in time. I also was responsible for overseeing professional practice, both on the nursing side and the allied health side, and also through the period of time in the early years, I had some departmental responsibility where I oversaw pharmacy and throughout the entire Health Care Corporation, pastoral care and ethics reported to me.

CHAYTOR, Q.C.:

Q. And overseeing professional practice for allied health workers, would that include laboratory technologists?

MS. JONES:

A. No. In program management, these--when we talk about professional practice, what we did was where in fact there was not a manager of a particular area responsible like a nursing manager responsible for nurses, we had a professional practice structure in place, but in the lab, the lab was a single management

structure where there was lab directorship and so therefore, the lab people inside of the lab program reported directly through to the manager in that area.

CHAYTOR, Q.C.:

Q. Were you ever responsible for laboratory medicine or laboratory services at all?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And you were responsible as professional practice for nurses?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And at different points, you were responsible for surgery, would have come under your mandate?

MS. JONES:

A. Surgery, as a program, in terms of program management, yes.

CHAYTOR, Q.C.:

Q. Okay, and if we could look at P-0043, please, page one?

THE COMMISSIONER:

Q. Documents will come up on the screen in front of you, and I believe you have a paper copy.

REGISTRAR:

Q. Excuse me, Ms. Chaytor, what was the number?

CHAYTOR, Q.C.:

Q. 0043, please.

THE COMMISSIONER:

Q. I'm not sure, frankly if -

CHAYTOR, Q.C.:

Q. The paper copy is not there.

THE COMMISSIONER:

Q. - is 0043 in that paper copy?

REGISTRAR:

Q. 0043 won't be in that.

THE COMMISSIONER:

Q. All right.

CHAYTOR, Q.C.:

Q. It should be on your screen, Ms. Jones.

THE COMMISSIONER:

Q. Sorry, I mislead you. Now, P-0043.

CHAYTOR, Q.C.:

Q. Okay, so if we look at this document, page one on the bottom is the date is May 15th, 2001.

MS. JONES:

A. That's right.

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CHAYTOR, Q.C.:
Q. And we understand this is a flow chart for the Health Care Corporation at the time.
MS. JONES:
A. Yes, it is.
CHAYTOR, Q.C.:
Q. And so your area would have been the second column, VP patient care services?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. And as of that time anyhow, you were responsible for surgery, medicine, critical care, peri-operative, child health, women's health, the Miller Centre, for nursing studies, pastoral care, nursing services development and the board committee that you would sit on would be ethics and values?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay. What's the peri-operative program?
MS. JONES:
A. Peri-operative is the operating rooms in St. John's on the adult side. The children's

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program managed their own operating rooms, so that would have been the operating rooms at St. Clare's and the Health Sciences.
CHAYTOR, Q.C.:
Q. Okay. So that would have come under your responsibility at this time?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay, and then the next page, page two of this exhibit, again we see vice-president patient care services. So again, that would be you?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. The date on this document, it has been revised as of July 19th, 2005.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And you're responsible at this point in time for child health, critical care medicine, nursing service development, pastoral care, peri-operative, rehabilitation, continuing care, Centre for Nursing Studies, surgery, and

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women's health?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and did it change after that? I guess, we go to page three.
MS. JONES:
A. In that one, we combined programs. The Miller Centre and the rehabilitation program were combined into a single program at that point in time.
CHAYTOR, Q.C.:
Q. Okay, and this flow chart shows that you--your title is now changed. You're vice-president adult acute care?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And your name is indicated.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And now you're surgery, emergency, ambulatory care, still peri-operative, cardiac critical care, medicine, Centre for Nursing Studies,

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nursing service development, still pastoral care?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And still the board committee that you're involved with is ethics and values?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And the date on--I don't think there's a date.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Revised June '04, up in the top left corner.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. And is that the situation then you stayed responsible for those areas until April 2005, when you became COO?
MS. JONES:
A. I would think so. We moved programs around from time to time, depending on what their issues were or where the expertise was, but

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that likely in June of 2004 would have been the portfolio that I ended with as we went in in April of 2005 to Eastern Health.

CHAYTOR, Q.C.:

Q. And what did it mean to be responsible for the professional practice of nurses?

MS. JONES:

A. We have a structure in place where we have a professional practice coordinators and councils, where we have staff come together in terms of, in this instance, nursing councils. They're responsible for standards and research in nursing, those kinds of things. So it was bringing together-- inside a program management structure, there isn't a direct line relationship for nurses reporting to nurses up through the old structures like directors of nursing. So what would happen is that we put a parallel structure for professional practice, not only for nurses, but for physios, OTs, social workers, and there's a number of other areas in there as well. So basically, for the standards and research, those kinds of things.

CHAYTOR, Q.C.:

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Q. So if there's continuing education for the nurses -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - would that come under what you were doing?

MS. JONES:

A. No, not necessarily, because we have human resources, and if you go across there, you see underneath Steve Dodge, organization development.

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. From time to time, throughout the Health Care Corporation, what we had done was we had pulled together all of the education resources, whether they were general education or professional education like nurse educators into a single department. At some point in time, in the Health Care Corporation, we put the educators for like nurses, because we had a fair amount of nursing education, back into the program. So there would be a surgery educator inside of surgery, okay. What would

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happen inside of the nursing service development is that they were more responsible for the education on standards and the more generic pieces, rather than the individual education of nurses. So they would coordinate the bigger pieces and were responsible for, you know, sending people out to the Association of Registered Nurses, through their annual meetings, those kinds of things, and if there were bigger pieces like medical legal or ethics or things like that, then nursing service development would coordinate that and offer it for the entire organization.

CHAYTOR, Q.C.:

Q. But if there were to be a new standard then adopted within the hospital, which would relate to how they do their job, that would come under what you're doing?

MS. JONES:

A. That would come under nursing service development because they had the responsibility for policy and procedure in the generic sense, but when it came to individual program area, like expertise in peri-operative or surgery, then that would happen at the

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program director level. So we had a stage, if it was very specific in a particular area that only involved surgery but didn't involve medicine or emergency, then it was the leadership within the surgery or the peri-operative area, whatever it crossed over. Then when we had general standards of nursing, that would apply to all areas. That's where the professional practice council would sign off and the professional practice coordinators would be, in fact, responsible for updating those on a regular basis.

CHAYTOR, Q.C.:

Q. Okay. Then if we look at, please, P-0044?

REGISTRAR:

Q. Sorry, what was that again?

CHAYTOR, Q.C.:

Q. P-0044. Okay, we see your name here. This is a flow chart for the Eastern Regional Integrated Health Authority.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And the date on the document is in the top left corner, and it's a little bit -

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MS. JONES:
A. It's 2006.
CHAYTOR, Q.C.:
Q. - missing, but I think it's November -
MS. JONES:
A. 22nd, 2006, yes.
CHAYTOR, Q.C.:
Q. Okay. I take it though that this was the document or this was the arrangement, the organization that came into being in April of 2005?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. It's revised somewhat though, I guess, in November of 2006, but if we could -
MS. JONES:
A. That revision would have been because Dr. Williams had left the organization and Dr. Howell had come into the organization and there was a realignment of quality and risk management out of the VP medical service and diagnostics portfolio into Pat Pilgrim's portfolio. That was the major change there.
CHAYTOR, Q.C.:

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Q. Okay. So other than that, it's pretty much what it was when the organization -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - came into being in April 2005, and in particular, if we look at -
MS. JONES:
A. The other thing though, there were some changes in Alice Kennedy's portfolio. Initially, she had started off with long-term care and then very early along, we moved community living and supportive services. So as the organization started to develop and put its organization structure in place, there were better alignments across various individuals. So Alice would have been hired for long-term care, but very early, probably by the fall of 2005, long-term care and supportive services would have been moved into that portfolio. Community living and supportive services would have been moved into that portfolio, out of Bev Clarke's portfolio.
CHAYTOR, Q.C.:
Q. Okay then, all right, and your own duties, at

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this point, you're COO of adult acute care?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. In St. John's. Where was your office?
MS. JONES:
A. My office for the majority of the time I spent in the Health Care Corporation as well as the time, except for the last few months, has been at St. Clare's.
CHAYTOR, Q.C.:
Q. Okay, and where's your office now?
MS. JONES:
A. My office is at corporate office on Waterford Bridge Road.
CHAYTOR, Q.C.:
Q. Okay. So throughout the time that you were VP and then COO, you were primarily located at St. Clare's?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and this indicates that your duties as COO of adult acute care are cardiac critical, clinical efficiency, emergency, ambulatory,

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emergency medical services, medicine, pastoral care ethics, peri-operative and surgery?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. So the pastoral care ethics, peri-operative and surgery, those have remained your portfolio since back in 1995?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Yes, okay. The other people on the flow chart, Pat Coish-Snow.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. She's operating officer Peninsulas. Where is she located?
MS. JONES:
A. She's located in Clarenville.
CHAYTOR, Q.C.:
Q. And Faye Matthews?
MS. JONES:
A. In Whitbourne.
CHAYTOR, Q.C.:

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Q. Alice Kennedy?
MS. JONES:
A. At St. Pat's here in St. John's.
CHAYTOR, Q.C.:
Q. Okay, and you're, at this point in time, according to the flow chart, you're still at St. Clare's?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And where would Pat Pilgrim be?
MS. JONES:
A. Health Sciences.
CHAYTOR, Q.C.:
Q. And Beverly Clarke?
MS. JONES:
A. At this point in time, she was at Cordage Place in St. John's.
CHAYTOR, Q.C.:
Q. Okay, and I guess I should have started with the CEO at the top, would have been at Waterford Bridge Road?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:

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Q. George Butt, where would he have been?
MS. JONES:
A. He's in Carbonear.
CHAYTOR, Q.C.:
Q. And Stephen Dodge?
MS. JONES:
A. He's at corporate office on Waterford Bridge Road in St. John's.
CHAYTOR, Q.C.:
Q. And Oscar Howell?
MS. JONES:
A. He's at the Health Sciences.
CHAYTOR, Q.C.:
Q. And Wayne Miller?
MS. JONES:
A. Wayne Miller is located out of corporate office on Waterford Bridge Road.
CHAYTOR, Q.C.:
Q. Okay, and what's the current situation? Which of these people have changed from those locations?
MS. JONES:
A. I've changed and Bev Clarke is now working out of what I would call Sobeys Square in on Topsail Road, moved from Cordage Place there

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to a new rental property.
CHAYTOR, Q.C.:
Q. Her position is the same though, is it?
MS. JONES:
A. Her position's the same, and in my role, Norma Baker is now sitting in that role and she works out of St. Clare's.
CHAYTOR, Q.C.:
Q. Okay. So while you were chief operating officer of adult acute care, did you have responsibility for any particular site? I know you were operating out of St. Clare's, or that's where your office was, but were you responsible for all the hospitals in St. John's?
MS. JONES:
A. The -
CHAYTOR, Q.C.:
Q. All the adult hospitals?
MS. JONES:
A. We don't do it in terms of the clinical services that are associated with that portfolio mainly work out of Health Sciences and St. Clare's. So it's the clinical service component, but it isn't responsibility for St.

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Clare's as a hospital and it's not responsibility for the Health Sciences as a hospital. What I will say to you is--and you would have seen it in an earlier organizational chart, I also, in this particular role at St. Clare's, was the liaison person with the Sisters of Mercy, where they have an agreement with the Government of Newfoundland and Labrador from pre-1995 where there is an on-site administrator that is called in their agreement. So I am the person responsible on that site for values and ethics in line with the tradition, the Catholic tradition. So that's the St. Clare's Advisory committee and there are terms of reference. There's an agreement with the government, but it's only in relation to ethics and values.
CHAYTOR, Q.C.:
Q. And you would have carried out that role, that liaison role, the whole time you were COO?
MS. JONES:
A. And I continue to carry that liaison role as the president as well.
CHAYTOR, Q.C.:

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Q. You still do?
MS. JONES:
A. I still do.
CHAYTOR, Q.C.:
Q. Okay. You indicated that you were never responsible for laboratory services.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. How does or how did the adult acute care portfolio then relate to the laboratory medicine program?
MS. JONES:
A. It would have related on, mostly on the program directors would have had relationships and they would have discussed issues that they may very well have had and through the executive team of Eastern Health or the old Health Care Corporation of St. John's, if there were issues between one program and another around policy or anything that couldn't be resolved at the program director level, then it would have been elevated to the executive team.
CHAYTOR, Q.C.:

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Q. Did anybody from the laboratory medicine program ever speak to you in your role as COO concerning issues of ER/PR or IHC in general?
MS. JONES:
A. Not in that, more of a supportive role. Don Cook would have--who was the clinical chief, may have had conversations with me, but not really around ER/PR or anything, just about what was going on in the organization and how they were feeling about it and how they were moving forward in terms of addressing issues, but not from a decision maker or even--it was more of a support role, supportive of the individuals versus the actual day-to-day operations and what was going on inside.
CHAYTOR, Q.C.:
Q. So no engagement of you in your official capacity?
MS. JONES:
A. No engagement in the official capacity.
CHAYTOR, Q.C.:
Q. Okay, and prior to--I take it from your answer that you're answering post spring of 2005. But prior to that time, did anyone ever approach you or discuss with you any issues

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concerning ER/PR or IHC in general?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. What did it mean to have responsibility for the peri-operative program?
MS. JONES:
A. The peri-operative program has a program leadership team that has a program director, a clinical chief. Actually, in peri-operative, there are two clinical chiefs. There is what we call co-clinical chiefs. So there would be one who has or works in the surgical area as a surgeon and an anesthetist. So that's one of the areas where we have two physician leaders, as well as a director. On at least a monthly basis or so, I would meet with the program director and we would discuss issues that were going on, what we needed to resolve, where the program was going, budget issues, staffing issues, anything that was going on in the program. Occasionally, the whole leadership team, I would meet with the whole leadership team as well, which included the physicians, just as touch points throughout the year, and

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I also met and I had a practice of meeting maybe two or three times a year with all of the managers in every one of the programs. So in the peri-operative program, there are three managers. So as a management team, I would have met with the divisional managers, we called them at the time, and the program director, just to hear their concerns or what issues were facing them and where they were going and how they were trying to resolve them.
CHAYTOR, Q.C.:
Q. And were any concerns ever brought to your attention regarding their role and how it relates to laboratory medicine program?
MS. JONES:
A. Not that I can recall.
CHAYTOR, Q.C.:
Q. And if there were to be policies developed as to how people in the peri-operative program carry out their job?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. What level, who would be responsible for the

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development and implementation of those policies?

MS. JONES:

A. Because peri-operative is a very specialized area not likely to cross over into other nursing realms that the responsibility for the development of policy in that area would have been left with the division managers as well as the program director. And the program director would have signed off on policies inside of their own manuals related to the particular work that was going on in that area.

CHAYTOR, Q.C.:

Q. Okay. And the division manager would be the physician?

MS. JONES:

A. No. The division manager would be the front-line manager for each one of the operating rooms as well as recovery room, because in peri-operative it has the surgical daycare, the recovery room, the operating rooms and the pre-admission clinics.

CHAYTOR, Q.C.:

Q. And so would the physicians involved also,

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though, involved in the program, have to sign off on any policies?

MS. JONES:

A. Not if it was a nursing policy, okay. They may very well have been involved in the discussions about what it was, particularly if we were talking about preparation for operating room, the types of solutions you would need, those kinds of things, so they would have discussion around that. But the policies generally were nursing policies.

CHAYTOR, Q.C.:

Q. Okay. And your responsibility for pastoral care and ethics.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. What did that mean, to be responsible for pastoral care and ethics?

MS. JONES:

A. In the same vein, pastoral care and ethics, the majority of the individuals that we have that work in pastoral care and ethics are volunteers. We have a small cadre of paid staff, probably only in the tune of five or

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six. And that particular staff, the director, since 1995, has been Dr. Rick Singleton, has really been responsible for nurturing pastoral care, respecting all of the various religions in this province and then working on various levels of interaction with patients. So from the pastoral care side we have a significant number of volunteers that are coordinated through pastoral care. We have, as I said, a small cadre of individuals that visit clients that maybe do not have a religious affiliation. And then on the ethics side this particular department has been the department that has been responsible for leading a lot of the ethics work. We have a liaison, we contract with Memorial University for ethics resource and, in fact, we have a contract that has been in place since probably '96 or '97 that we've expanded over time where we use an ethics structure, not necessary--ethics consultation is not done by a single individual, it's done by a group. We have a whole very formal process of a number of trained facilitators that we've internally trained using the resources from the

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university as well as organizational development. We've trained facilitators. And when we get an ethics consult or we get a request for an ethics consult, we bring a facilitator in to tease out the ethics question, because lots of times it's not really an ethics question, it's really complate (phonetic) maybe staff complate, maybe there needs to be some pre work done, so that's fairly well articulated. We bring together a group of individuals that are familiar with the issue, maybe includes the patient, maybe it doesn't, depends on what the issue is. And then we move the issue forward with recommendations. Ethics inside of the Health Care Corporation and as well moving into Eastern Health included not just clinical ethics, but it included administrative ethics, as well, so that's everything from food choices to lottery, to gambling, those kinds of things. So we had broadened much further than just clinical ethics into all areas of ethics inside of Eastern Health and that's what pastoral care and ethics in--when we came together in Eastern Health, we named it as

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pastoral care and ethics. In the old Health Care Corporation of St. John's it was only the pastoral care department, but they had responsibility for ethics, it was not in their name, but they still put all of the structures in place and maintained the structures as we moved forward.

CHAYTOR, Q.C.:

Q. Okay. And so your role in all of that, if there were to be an ethical consult requested, does that come in through you?

MS. JONES:

A. Any ethics consult, my previous, my chief operating officer's secretary, okay, she would receive consults, okay, and -

CHAYTOR, Q.C.:

Q. So it would come in to your office as chief operating officer -

MS. JONES:

A. Would come in to the office rather than in to me.

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. And all she would do is identify a

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facilitator, pass it on to the facilitator and then we were the place that housed all of the ethics reports, okay. So that on a yearly basis we then generated a list of the number of ethical consults that we had in the run of the year, the type of issue and then we would review them in terms of the regional ethics committee, it would have been called basically that throughout the entire period of time. We would review the types of consults to determine whether, in fact, there was need to develop some policy direction in certain areas. And we would review them on a yearly basis to see where the trends were and the work that we needed to continue to work on or to review, if we had some policies in a particular area, because they were either in conflict or there were things that were coming through the ethics consults.

CHAYTOR, Q.C.:

Q. So when the consult came in, you may not even be aware that a consult came in?

MS. JONES:

A. Not unless--unless there was a particular request that it needed to be pushed fast and I

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might need to assist my secretary to identify a facilitator. Normally we would have worked through Rick Singleton, if he wasn't around at the time, because the facilitators were inside of Eastern Health. We always had an ethicist who worked with a consult, but it was maybe sometimes helping her to say which facilitator can we access really quickly and to make those kinds of things happen.

CHAYTOR, Q.C.:

Q. Okay. So the consult would come in and your assistant would deal with it in terms of -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - finding a facilitator?

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. When the report is generated, would you see that?

MS. JONES:

A. No, not necessarily, unless it was specifically sent to me saying--and I will reference the one that I know that you're

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going at, which was in June of 2006. There was an ethic consult requested around the clients who had died in the ER/PR and Dr. Williams had called me to say, "I need an ethics consult on that. Can you get Rick on that right away?"

CHAYTOR, Q.C.:

Q. Okay.

MS. JONES:

A. So I would have made a phone call to Rick to say, "This is important. We need to action it." And then when it was finished, he would have sent the report to me back to say, "Louise, this is done now." That's how -

CHAYTOR, Q.C.:

Q. And I'll ask you some details about that later.

MS. JONES:

A. Yeah, that's right.

CHAYTOR, Q.C.:

Q. So in that particular situation you did have personal contact?

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

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Q. You were contacted directly by Dr. Williams?
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. But the norm was that it would come in through your assistant?
MS. JONES:
A. Yeah. And the only other, what you'll hear is sometimes a facilitator, normally maybe Rick, Dr. Rick Singleton, but there may have been other facilitators who may have called occasionally to say "What kind of individuals do you believe we need around a consult on A?" And I would say, "You'll have to talk to the people in the area, but I would suggest that you bring in, you know, the discipline of physio," or "medicine" or whatever. So it wasn't directing the consult, it was maybe helping the facilitator identify the type of individual, not the actual individual and then working with the group to identify who else needed to be in on the consults.
CHAYTOR, Q.C.:
Q. Okay. All right. And I'll come back to that afterwards when we deal specifically with this

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consult.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Did you--in terms then of tracking trends at the end of the day -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - you said that part of what you would do is sit down at the end of the day and review any ethical consults that had happened that year?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. What would that involve? And you say "we", is there a committee or who would do that?
MS. JONES:
A. Well, usually Dr. Singleton and my secretary would sit and say, "that was on competency" or "this was on decision to treat," or whatever in terms of teasing out what the main area of the consult was, not the outcome of the consult, just the theme. And so occasionally as my secretary would be working on that,

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she'd say, "Louise, you know, this appears to be this theme," and then we would generate only a maybe two or three-page report, we wouldn't list them all out, we would say we had five consults in the area of competency, we'd--and the various areas, and it just eludes me now what they might have been. And then at the end of the day we would bring forward and have discussion inside of the regional ethics committee to say, "Look, these are the things that we're seeing here. What is the implication?" It may have been education on a particular policy, it may be we need to revise a particular policy, but it would have been what we would have had was a regional ethics committee that we first would have gone to the facilitators, we would bring them together on a yearly basis to look at the report that we had generated. They were the individuals who'd ran the consults, what the issues were, do we need to change process and from their perspective was the there any follow-up that we needed to do and any work that would need to flow out of it.
CHAYTOR, Q.C.:

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Q. Okay. And the issue, of course, that was sent for an ethical consult in this case was an issue around disclosure of information.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Had you noticed any trend in issues of disclosure prior to the consult, this consult being done in the middle of 2006?
MS. JONES:
A. Not really. But what we had done in the previous Health Care Corporation as we came into Eastern Health disclosure was an issue. So the ethics committee, working with quality on that, had done a lot of work around private disclosure, okay. Not the issue of public disclosure. So we had a policy developed in the latter part of the old Health Care Corporation of St. John's which dealt with disclosure using the evidence base, what was out there at the time. So the ethics committee had worked with that because disclosure in terms of the general public and the health care environment was becoming a big issue and Canadian Patient Safety Institute

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was on the issue of disclosure, plus the Canadian Council on Health Services Accreditation was looking for policy direction on disclosure. In the past we had used maybe public statements from the Canadian Nurses Association or the Canadian Medical Association, but we hadn't actually adopted a disclosure policy inside the organization. So there was a lot of time and energy spent in developing that particular policy statement with a lot of ethics input into it at the time.

CHAYTOR, Q.C.:

Q. And those are the policies, of course, that we've seen here in the -

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. - course of the Inquiry?

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. Tell us then a bit about your current position? You took over as acting interim CEO. When exactly was that?

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MS. JONES:

A. 9th of July, 7:30 in the morning.

CHAYTOR, Q.C.:

Q. And how did that come to be?

MS. JONES:

A. I had gotten a call from the chair on the Sunday, so that would have been the 8th of July. I wasn't in town at the time and we didn't connect until somewhere around 11:30 that night, and she wanted to have a discussion with me at 7:30 the next morning. So when I arrived at work the 7:30 the next morning, the vice chair and the chair had indicated that Mr. Tilley had resigned and they asked if I would take on the interim president and CEO role.

CHAYTOR, Q.C.:

Q. Okay. And you agreed to do that that morning?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And were there any--were you given any description as to what would be expected of you, how was your job defined for you?

MS. JONES:

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A. Well, there is a contract that there is with the organization, so I was aware that basically I would take on this interim role until they recruited their permanent CEO. We had had the discussion that that would not happen inside of six or nine months, probably close to a year by the time they got out and advertised, that I would take on the full duties and responsibilities. I had indicated at the--there was the issue of the Burin radiology, preparing for the Commission of Inquiry, and whatever support I needed to move those particular issues and to move the organization forward, that I would have their full support and basically we started at 8:30 that morning.

CHAYTOR, Q.C.:

Q. Okay. And in terms of your--who do you report to?

MS. JONES:

A. I report to Joan Dawe.

CHAYTOR, Q.C.:

Q. Okay. And who is your liaison or contact at the Department of Health and Community Services?

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MS. JONES:

A. Would be the deputy minister, currently Don Keats.

CHAYTOR, Q.C.:

Q. Okay. And prior to Keats taking his position?

MS. JONES:

A. It was Robert Thompson.

CHAYTOR, Q.C.:

Q. And I'll come back to that a little later on in terms of any discussions you've had with the department and your current relationship with the department.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Let's talk about the issue then at hand. When did you first hear that there was such an issue as ER/PR?

MS. JONES:

A. It's difficult to kind of put an exact time line on it, but it would have been as we were going into the summer of 2005. You know, whether it was June, July or whatever, it's--I can't say, but it would have been as we were going into the summer. And it was really just

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that there was an issue in the lab. At the time it was a discussion that there was an individual client who they were looking for treatment options on and there was a question around the ER/PR result and the result being different on retest than it was originally. And then during the summer of 2005, remembering that Eastern Health only came together in April, and in the summer we don't come together, we would have only heard that as an executive because we come together like every two weeks or so, we would have been updated about what was going on. Plus we were putting organizational structures in place, we were going around the region, so there were very little executive committee meetings through the summer. And then we would have, when we came back in the fall, in September, we would have then heard a little bit more about it.

CHAYTOR, Q.C.:

Q. Okay. And who did you hear about the patient, who did you hear about the patient who had some conflict in her ER result?

MS. JONES:

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A. It's--I can't put an exact, but it may have been in a conversation inside of an executive team to say that "We have an issue, we have DAKO and we have Ventana," at that point in time it was two machines. I now know that they were DAKO and Ventana. We were looking to see if there was an issue with the machine because it was a relatively new one. But the--what we would have called the sentinel event was that the physicians in--the oncologists were looking for a treatment option and in identifying a treatment option there was a change in a result of an ER/PR score.

CHAYTOR, Q.C.:

Q. Okay.

MS. JONES:

A. And so all of the things that happened through the summer of 2005, we would never have been aware of.

CHAYTOR, Q.C.:

Q. You wouldn't have been aware of that?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. So it would have come to your attention that

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there was a particular patient?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Who had had a change in her ER result?

MS. JONES:

A. In score.

CHAYTOR, Q.C.:

Q. And do you recall who told you that?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. No. Was it Dr. Bob -

MS. JONES:

A. It probably was probably in a group discussion, right. So -

CHAYTOR, Q.C.:

Q. Was it Dr. Williams?

MS. JONES:

A. I can't say for sure.

CHAYTOR, Q.C.:

Q. Okay. So that would have come out of a group discussion that there was a patient?

MS. JONES:

A. Yes.

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CHAYTOR, Q.C.:

Q. And would that be the norm that it would be discussed if there was--I mean, there must be a lot of instances in a hospital where there's some change in treatment for a patient. Why would that have been the subject of discussion amongst a group?

MS. JONES:

A. Because what we were talking about was the technology as well as need--going back and at the end of the day finding out what was going on, okay. So this was a bigger issue than just one patient, right.

CHAYTOR, Q.C.:

Q. Okay. So at the time that you're hearing about it, you know that it's more than one patient involved?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So there had been other testing done, I take it?

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

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Q. Okay. And ever whose telling you this, what-- who would the group be, then, do you recall, who else would have been there?
MS. JONES:
A. Well, the group would have been the executive, because that is the only time that we would have come together. The likelihood of myself having individual meetings with Bob Williams, unless it was on an issue that he had identified or that we needed to discuss, was minimal, right. We did most of our work through executive, okay, if there were issues that needed to be resolved. And at that point in time you have to remember that the Health Care--that Eastern Health was just coming to being. We were doing, even in May and June, all the way through May and June we were going all throughout the region seeing Bonavista and Burin and all of the sites and getting a handle because we'd only been as an executive team in place for less than two or three months. So we were getting a handle on the scope of--even though we had our own individual portfolios, in my instance the portfolio that I had I was quite used to

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because it essentially was a portfolio that I had brought forward from the old Health Care Corporation of St. John's. Many of the other chief operating officers and even the VPs, their portfolios were vastly different than what they would have had in the past. So it really was an opportunity for us to move through the region, to see all of the sites, to see all of the services and then to talk about organizational structure. So a lot of the initial work that we were doing was how am I going to set up my portfolio on a regional basis and those kinds of things.
CHAYTOR, Q.C.:
Q. Right, okay. I just want to focus in, though. The question that I'm wondering about is when you learned about ER/PR, what you were told, who was in the room, and -
MS. JONES:
A. Can't tell you that, Ms. Chaytor.
CHAYTOR, Q.C.:
Q. So you have no recollection as to who told you and who else was present when you were told?
MS. JONES:
A. No. And it would have--like I say, most

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likely would have been that entire executive team who would have been in a every two-week meeting.
CHAYTOR, Q.C.:
Q. So you think it came up in a meeting?
MS. JONES:
A. In a meeting.
CHAYTOR, Q.C.:
Q. And would you expect that if that were the case that it would be reflected in the minutes of the meeting?
MS. JONES:
A. Remember at this point in time, though, we were doing a lot of touring around, okay. So whether it's a meeting or whether it's conversations that we're having while we're on tour is -
CHAYTOR, Q.C.:
Q. But if it came up in an official meeting, would you expect -
MS. JONES:
A. It would have been.
CHAYTOR, Q.C.:
Q. - it to be reflected in the minutes?
MS. JONES:

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A. Yeah, in the minutes of an official meeting.
CHAYTOR, Q.C.:
Q. Right, okay. So you think it came up, though, in the context of conversation, if not in the context of an official meeting with the executive team?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay. But you don't recall who brought the issue forward?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. Okay. And you can't say -
MS. JONES:
A. And I would anticipate that that issue would have been brought forward by Dr. Williams just to say, "We have an issue in the lab," right, "and that we are moving forward with finding out what's going on."
CHAYTOR, Q.C.:
Q. Yes. And what you were told in terms of the scope of the problem at the time was that there had been a patient?

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And there was some issue of the two machines?
MS. JONES:
A. We were thinking, they were thinking that it was the DAKO v. the Ventana.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:
A. At the time.
CHAYTOR, Q.C.:
Q. At that particular time?
MS. JONES:
A. At that particular time.
CHAYTOR, Q.C.:
Q. And that there was an issue to be investigated so it had to have involved more than the one patient?
MS. JONES:
A. And at the end of the day, that investigation would have happened inside the lab, so until the investigation was done and there was something to report, that would have been-- there would have been no other involvement of

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executive.
CHAYTOR, Q.C.:
Q. Okay, and this happened, this conversation, sometime June or July of 2005?
MS. JONES:
A. Yes, sometime around the summer of 2005.
CHAYTOR, Q.C.:
Q. At any point prior to that, had anything come to the executive management committee in terms of similar issues with the laboratory?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. Had the issue that we know of regarding Dr. Ejeckam in 2003, had that ever been discussed at the executive management level?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. Were you otherwise aware of that, yourself? Had you heard of Dr. Ejeckam and the 2003 issue?
MS. JONES:
A. I would not have had any knowledge of what was going on inside of the lab and I didn't even

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know that there was a Dr. Ejeckam, so -
CHAYTOR, Q.C.:
Q. So the first time you hear of Dr. Ejeckam is where?
MS. JONES:
A. Is when the premier holds the letter up in the House.
CHAYTOR, Q.C.:
Q. So may of 2007?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. When you were told about the ER/PR issue, who did you understand was taking charge of the issue?
MS. JONES:
A. Dr. Williams. And that would have been anticipated because it was his program area, so he would have taken the lead on this, having it investigated and dealing with the issue as it was evolving.
CHAYTOR, Q.C.:
Q. And I take it at that point in time your portfolio wasn't brought into the group?
MS. JONES:

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A. No.
CHAYTOR, Q.C.:
Q. Do you ever become part of that, the issue, do you get involved in an official capacity at some point?
MS. JONES:
A. No, the only thing on the fixation and I'm sure you'll go there, but that was a letter from the clinical chief at that point in time, right.
CHAYTOR, Q.C.:
Q. So up until that point in time when the issue of fixation is brought to your attention, up until then you had no official dealings with this issue?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. And the only information, I take it, you would have on the issue would have come from the executive management meetings?
MS. JONES:
A. And the board meetings.
CHAYTOR, Q.C.:
Q. And board meetings, okay.

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. When is it first brought up at the board?
MS. JONES:
A. When they would have been back in September, although we do know that the board chair and she's given evidence to that, that she would have been informed of the first, the latter part of September, it would have been an issue that was discussed, Dr. Williams and Mr. Tilley talked to the board about and did a presentation at that time.
CHAYTOR, Q.C.:
Q. Okay, and I'll ask you about that. So you know the board chair was advised -
MS. JONES:
A. Only now.
CHAYTOR, Q.C.:
Q. Only through this process.
MS. JONES:
A. Only through this process.
CHAYTOR, Q.C.:
Q. Mr. Tilley didn't tell you that at the time?
MS. JONES:

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A. No.
CHAYTOR, Q.C.:
Q. If we could have a look at P-0486, please, Registrar, and I believe it's page 17. This is a page from -
MS. JONES:
A. 29th of June.
CHAYTOR, Q.C.:
Q. Yes, from June 29th, 2005, executive team meeting in Placentia.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And if we go to the front page, we see that you are in attendance.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And it says after your name, "medicine, surgery and critical care", why would that be?
MS. JONES:
A. I'm thinking that Joyce Penney, who was the executive assistant who would have been taking these minutes, would have just couched it that way, rather than--because I don't see chief

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operating officer next to any of them, okay.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:
A. And at that point in time we may not have called it adult acute care, right.
THE COMMISSIONER:
Q. I know I'm going to divert here, but I notice that on the current flow chart of the organization, there are chief operating officers and senior director and VPs?
MS. JONES:
A. Yes.
THE COMMISSIONER:
Q. What, if anything, is the difference in those titles?
MS. JONES:
A. The VPs which you have for corporate services people in information and medical services and diagnostics are regional portfolios, okay. The chief operating officers are geographic, for all intents and purposes, we have somebody who takes are of the full continuum of service in the peninsulas, Pat Coish-Snow; and then the Avalon area, so it's long-term care

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community as well as acute care. But inside of St. John's, because that portfolio was so large, there's no way that one chief operating officer could be responsible for community long-term care and supportive services, so what you have there is you have almost sector specific. I have all of acute care, Bev Clarke has all of the community services, then you have Pat Pilgrim who has mostly cancer care and your rehabilitation at the time. So because St. John's was so small, we couldn't do a linked programs across the continuum from community to acute care all the way to long-term care, which you could do in the geographic areas, like peninsulas and Avalon. So two very different--senior director for corporate research and planning, that is really a regional portfolio as well.
THE COMMISSIONER:
Q. Thank you.
CHAYTOR, Q.C.:
Q. Thank you, Commissioner. If we could go back then, this is the excerpt from the minutes of June 29th, 2005. And it indicates that 1.6 follow-up from meeting with Department of

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Health and Community Service officials, June 28th, 2005, "Louise Jones circulated draft notes from the 28th of June, 2005 meeting with the Department of Health and Community Services and agreed to refine these notes for in-depth discussion at next week's meeting." And there's no heading as such, no indication as to what the subject matter would have been.

MS. JONES:

A. Matter is, yeah.

CHAYTOR, Q.C.:

Q. Do you have any recollection as to what that meeting would have been about?

MS. JONES:

A. Not at this point in time, unless there is something else, an attachment for original draft notes.

CHAYTOR, Q.C.:

Q. And we don't have--is it normal when it's a meeting with the department not to indicate what the subject would be?

MS. JONES:

A. Unless this was one of those meetings where we were having ongoing discussions on a particular issue, people were obviously, I

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would think, that there were more than me, right, and we would have probably been, as an executive team meeting with the Department of Health and Community Services, so they would have been minutes or notes in this instance.

CHAYTOR, Q.C.:

Q. Did it have anything to do with the ER/PR issue?

MS. JONES:

A. No, would never have had anything to do with ER/PR.

CHAYTOR, Q.C.:

Q. Did you ever meet, other than after taking on your job as CEO, did you ever attend any of the meetings with the department on the ER/PR issue?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And if we scroll down, this is June 28th, 2005 and that's the only excerpts -

MS. JONES:

A. Yeah, okay.

CHAYTOR, Q.C.:

Q. There's nothing mentioned or certainly nothing

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recorded in this meeting in Placentia on the ER/PR issue?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. So if it came up at that point in time, it wasn't part of the formal discussion at the meeting.

MS. JONES:

A. Wasn't part of the formal discussion, no.

CHAYTOR, Q.C.:

Q. And does the fact that you're in Placentia on that date with your colleagues, does that jog your memory as to whether or not that in fact was the time that you first learned about ER/PR?

MS. JONES:

A. No, it wouldn't jog my memory at all.

CHAYTOR, Q.C.:

Q. And we see that Dr. Williams was present in Placentia that day as well?

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. Okay, then page 18, we have minutes of the

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executive management committee meeting.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Again this is exhibit 0486 and this meeting is held on July 5th, 2005.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And you are also in attendance at this meeting?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. As is Dr. Williams.

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. And if we come to page 19, there's follow up from a meeting with the Department of Health and Community Service officials, June 28th, 2005, "draft minutes from that meeting with the department officials were circulated and reviewed. Amendments are to be forwarded to Joyce Penney"?

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. "George Tilley will provide a copy of the updated minutes to the Department of Health and Community Services, per their request."
MS. JONES:
A. And, you know, it's hard to think three years back, but we did have regular meetings as executive teams with the department, so it could have been a meeting about issues that were going on, about planning that was going on at the department, it could have been anything. Without prompters as to what those notes were -
CHAYTOR, Q.C.:
Q. Yes, now the minutes probably still exist, the minutes from that.
MS. JONES:
A. From a meeting, yes.
CHAYTOR, Q.C.:
Q. From the draft meeting.
MS. JONES:
A. And usually what would happen if we had an executive team meeting with executive team,

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one time the department would take the minutes and the next time, the Eastern Health or the old Health Care Corporation would take minutes.
CHAYTOR, Q.C.:
Q. And I noticed in reviewing those executive management minutes, meeting minutes, that often though the issue is described as to what was discussed, the purpose for the meeting and what was -
MS. JONES:
A. And I would suggest, though, that there were a number of things and it could have been anything from pandemic planning to how we were setting ourselves up as an organization, so it could be an array of just general discussion.
CHAYTOR, Q.C.:
Q. So would there be any reason, though, not to have that listed in your minutes as to what was discussed?
MS. JONES:
A. It really, that Mrs. Penney would take the minutes and would reflect, you know, in this instance it was I was going to do the minutes, she probably wasn't even aware because she

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wouldn't have been at the, so we wouldn't have had any discussion, it might have been very generic like the minutes from last week, Louise is doing and you know, here they are now, send any changes.
CHAYTOR, Q.C.:
Q. So there's no significance when there's -
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. No significance to any time when you see reference to a meeting without reference as to the issues discussed at the meeting, there's no significance to that?
MS. JONES:
A. No, no, and if there was a particular issue that we had with the department or there was something that was of concern to us, the issue would have been listed.
CHAYTOR, Q.C.:
Q. So to the best of your recollection, this is now July 5th, 2005.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:

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Q. This also did not pertain to the ER/PR issue.
MS. JONES:
A. No, no, and it would not have pertained to the ER/PR issue, I know that.
CHAYTOR, Q.C.:
Q. And this meeting, I believe is in St. John's?
MS. JONES:
A. Yes, it is.
CHAYTOR, Q.C.:
Q. And if we scroll down through this, there's relevant portions have been put there and I see no indication that, again, that the ER/PR issue came up?
MS. JONES:
A. No, that's right.
CHAYTOR, Q.C.:
Q. Have you looked through the executive management committee meetings in preparation for coming here today?
MS. JONES:
A. Just the latter ones, since July where I was.
CHAYTOR, Q.C.:
Q. So not the 2005 ones?
MS. JONES:
A. Not the 2005.

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CHAYTOR, Q.C.:
Q. So do you know when it first comes up in the minutes? The issue of ER/PR?
MS. JONES:
A. The issue of ER/PR probably comes up in September because we do have--I didn't do it, but I have looked at them in the past and I've also gone back to see if there was anything in the Newfoundland and Labrador Health Boards Association in terms of minutes and discussion between CEOs, so I do believe the first meeting in September, which would have been after the Labour Day weekend and I would -
CHAYTOR, Q.C.:
Q. September 28th.
MS. JONES:
A. 28th, is it? And that is after the board meeting.
CHAYTOR, Q.C.:
Q. Yes, after the board meeting. So tell me what you recall then about the board meeting, your recollection of the discussion around the issue at that time?
MS. JONES:
A. It was, there was information that we were

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hearing at the board meeting that we hadn't heard as an executive, so it really was an information session for us. There was discussion around the Ventana and the DAKO, there's no question about that in my mind, and there was also discussion that we have stopped testing. We're referring out to Mount Sinai and that we would have been in the process of having or whether they were on the ground at the time, but we had contracted with individuals to come in to do external reviews of the organization of that particular lab.
CHAYTOR, Q.C.:
Q. So then external reviewers had been contracted with, to come in. Did you understand whether or not they had already been in or were in the process of -
MS. JONES:
A. I can't recall whether that would have, you know, if you asked me to recall the meeting, I wouldn't be able to recall that depth in the meeting, right.
CHAYTOR, Q.C.:
Q. Was there any discussion then as to what the reviewers may or may not have found?

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MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. Do you recall it being to that stage?
MS. JONES:
A. I wouldn't have thought it was to that stage because it was the first time, so there was really a listing of what ER/PR was, you know, a little bit about ER/PR negative, a little bit about treatment options and at the end of the day--in terms of just giving some sense and I thought as we were going through it, because it was the first time, remember you have a new board and it's the first time that you have a major clinical issue and in the past we probably would not have had that level of discussion around a single issue, but where we had stopped testing, okay, where there were treatment options, where there maybe was machine involvement and where we had peer review, those were appropriate things to be brought to the board, but we were hearing it in its entirety.
CHAYTOR, Q.C.:
Q. And those are the things that stick out in

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your mind, that's what you remember?
MS. JONES:
A. Yes, yeah.
CHAYTOR, Q.C.:
Q. And the machine involvement, Ventana and DAKO, that sticks our clearly in your mind?
MS. JONES:
A. Machine very clearly and we very clearly talked about their being a manual process, semi-automated, you know, to more of an automated with a Ventana, so those discussions, you know, now whether I'm confusing that with stuff that we heard later on, but it would have definitely been saying with the new machine it would have been more of an automated process than with the DAKO, so that was something that was always talked about.
CHAYTOR, Q.C.:
Q. But you recall that being said at the board meeting when the board is first being informed of the issue.
MS. JONES:
A. I would say that that was definitely there.
CHAYTOR, Q.C.:

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Q. And overall it was basically to explain what exactly ER/PR is, the clinical issue itself and the fact that this testing had stopped, now using Mount Sinai, that people are coming in, external reviewers have been in or are in the process of coming in.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And you recall this issue of the machinery.

MS. JONES:

A. And machinery.

CHAYTOR, Q.C.:

Q. Do you recall any other issue being discussed as to what could have caused the issue?

MS. JONES:

A. No, and those were the same kinds of discussions that happened for a long, long time, the machines, you know, the 40 steps -

CHAYTOR, Q.C.:

Q. But this is the first time you're hearing this kind of detail about it.

MS. JONES:

A. First time that we were hearing that kind of detail and we were hearing it at the board.

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CHAYTOR, Q.C.:

Q. Okay, so you learned about the detail the same time that the board members -

MS. JONES:

A. As the board did, yes.

CHAYTOR, Q.C.:

Q. And that's what you recall having been discussed?

MS. JONES:

A. Absolutely.

CHAYTOR, Q.C.:

Q. And do you recall any other issue discussed as to what potentially could have been the cause of the problem?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. Do you recall any discussion around the issue of disclosure and how Eastern Health would go about the issue of disclosure?

MS. JONES:

A. I don't recall anything specific inside of those meetings, right.

CHAYTOR, Q.C.:

Q. And do you recall any particular questions

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from the board on the presentation given by Dr. Williams?

MS. JONES:

A. Not really because it was fairly detailed, so if there had been, it may have been for clarification of a particular point in, but I don't recall anything.

CHAYTOR, Q.C.:

Q. And did you, yourself, raise any issues or concerns?

MS. JONES:

A. We, as executive, relayed the CEO or whoever was presenting, presents to the board. Those discussions, if we had questions, would have come out inside of our own executive verses at the board.

CHAYTOR, Q.C.:

Q. So it would have been Mr. Tilley then, I take it and Mr. Williams who did this presentation?

MS. JONES:

A. Absolutely.

CHAYTOR, Q.C.:

Q. So you did not raise any questions or concerns? If you had them, you didn't raise them in that forum?

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MS. JONES:

A. Inside the board, no.

CHAYTOR, Q.C.:

Q. Shortly thereafter, of course the issue became a public issue on October 2, 2005.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Were you brought into the loop more or the core group handling this issue at that point in time?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. Were you provided copies of the media coverage around the event?

MS. JONES:

A. We always got copies of the media coverage, whatever was in the media on a weekly or even on a daily basis, depending on what it was, communications would send it out to executive. Communications also brought together on a regular basis items for the board.

CHAYTOR, Q.C.:

Q. So any issue regarding, any issue that's of a

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public nature regarding Eastern Health would be forwarded to all members of the executive?

MS. JONES:

A. Yes, as it was coming out, you know, you often see transcripts of, you know, whether it's "Open Line" or attachments from the "Evening Telegram" or whatever, so there would have been at a point in time, the day, the next day or whenever they were being put together.

CHAYTOR, Q.C.:

Q. So that can make for a lot of reading, some days.

MS. JONES:

A. A lot of scanning.

CHAYTOR, Q.C.:

Q. And do you read what comes across your desk or your computer in that regard?

MS. JONES:

A. Most people will tell you I read everything.

CHAYTOR, Q.C.:

Q. All right, and is that true of the ER/PR issue?

MS. JONES:

A. If it was in terms of the media coverage, I would have probably been reading at home. I

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certainly wouldn't have been, you know, the "Open Lines" or that, so other than scanning headlines and to see the nature of it, probably not every single word.

CHAYTOR, Q.C.:

Q. So do you recall then the story coming out in "The Independent" on October 2nd, 2005?

MS. JONES:

A. No, but we would have gotten that the following week as part of, you know, the media communications sending it to us, right, so I wouldn't normally have "The Independent", I don't purchase "The Independent".

CHAYTOR, Q.C.:

Q. So would that have been then, when you did see it and read it, would you have then talked to anybody about it? Did that become the subject for discussion amongst the executive or anyone else in your group?

MS. JONES:

A. I think that what you would have heard was that because we were dealing with individual clients as the ER/PR results were coming back, that at the end of the day there would have been some point in time when somebody would

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have talked to the media because we didn't have all of the results back. And that was really the impetus behind this particular story, it was an individual, I do believe, and that's how the story kind of got broken. So there was -

CHAYTOR, Q.C.:

Q. I'm sorry, just say that again?

MS. JONES:

A. The issue about ER/PR retesting, okay, we were talking--when the results of tests came back and we were dealing with clients on the results of tests, then that--we know, I think that at some point in time there would have been media interest in it, okay, but we would not have--if you go back to our disclosure policy that we had come from, in terms of the old Health Care Corporation, we would have always had the thought in our head that we wanted to deal individually with the client, rather than hearing it through the media.

CHAYTOR, Q.C.:

Q. What's your understanding of how this matter became a public issue?

MS. JONES:

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A. In that particular October 2nd, "Independent" break of the story.

CHAYTOR, Q.C.:

Q. That a patient went to the media?

MS. JONES:

A. No, that it was uncovered?

CHAYTOR, Q.C.:

Q. I'm sorry? Uncovered through having given the results to a patient?

MS. JONES:

A. The story itself really talked about the ER/PR. So, how "The Independent" got the story, I don't know.

CHAYTOR, Q.C.:

Q. Okay, I thought you were saying that because it came out through -

MS. JONES:

A. No, no, how "The Independent" got the story, I wouldn't know how "The Independent" got the story, but that was -

CHAYTOR, Q.C.:

Q. Okay.

MS. JONES:

A. And we would have only--we would not have gone public with anything around ER/PR because we

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always had this issue of wanting to let patients know first -

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. - before we would let public. And at the end of the day, we had already stopped testing.

CHAYTOR, Q.C.:

Q. Right, okay. So whether or not there were any discussions between the reporter and the Communications Department of Eastern Health, you don't know that?

MS. JONES:

A. I have no idea.

CHAYTOR, Q.C.:

Q. Okay. If we could go then to 0486 and I believe it's page 39. And this is the Executive Management meeting of September 28, 2005. And Ms. Jones, I believe this is the first time it appears official in your official minutes of your meetings.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And we're on page 39?

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MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. We'll just go back here and we see that you are in attendance.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And Dr. Williams is in attendance. And I take it, Mr. Tilley would have been chairing the meeting?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And under 2.1 "Laboratory ER/PR Update". Now, it says "update" which would lead you to believe that it must have been discussed at an earlier time because you're being provided with an update?

MS. JONES:

A. I'm not sure whether that's a correct interpretation of that. Update being an update from Dr. Williams, but I'm, you know, have to almost ask Joyce Penney where that came from.

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CHAYTOR, Q.C.:

Q. Okay. And your review, as well, of the minutes though, this appeared to be the first time it was discussed.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And it was after the board meeting?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So, perhaps it's an update from the past couple of days?

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. "Additional information has been received from Mount Sinai related to the ER/PR concerns in the laboratory. Dr. Williams advised that a meeting will be scheduled with the pathologists, oncologist and laboratory staff to review the new information and make recommendations. Consultants from Mount Sinai, chief technologists and chief pathologists have completed their site visit.

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Specimens have not yet been received from central, west and Corner Brook. However, they should be received by the end of next week. Once received, these specimens will be sent out of province for testing. Consideration is being given to retesting specimens for the period 1997 through 1998. We are positioned to move with a communications strategy when required". And "communications strategy" is in bold. So, do you have any other independent recollection of what would have been discussed at that meeting?

MS. JONES:

A. No, because we would have had a discussion or it would have been brought to board. So, we would have been aware of what was at board. And this then becomes bringing it into the executive minutes.

CHAYTOR, Q.C.:

Q. And what do you recall being the additional information having been received from Mount Sinai related to the concerns? Do you recall what that was?

MS. JONES:

A. He may never have said what that is. And Dr.

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Williams was meeting here with the pathologists, oncologists and laboratory staff and remember, this is still a laboratory issue -

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. - that he would have been following through on whatever he needed to follow through on.

CHAYTOR, Q.C.:

Q. And it's to review the new information and make recommendations.

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. And then it goes on to say, "consultants from Mount Sinai, chief technologists and chief pathologist have completed their site visit".

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Now, the chief pathologist, we understand, was from B.C. -

MS. JONES:

A. Was Banerjee.

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CHAYTOR, Q.C.:

Q. - Cancer Institute.

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. And so "meeting with the staff to review the new information, make recommendations", you don't have any recollection as to what that was about.

MS. JONES:

A. No, and any time you have a review of that and it doesn't matter what kind of review, you usually meet with the consultants before they leave, before they actually get the reports. So, some of this may very well have been follow up on the discussion that they had before they left. And that's only an assumption on my part.

CHAYTOR, Q.C.:

Q. Okay. And this is the end of September, 2005.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And the specimens had not yet been received from central, west and Corner Brook.

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MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. And then they would be sent out of province. What is this about consideration being given to the retesting specimens for the period 1997 to 1998?

MS. JONES:

A. I can't recall what that would have been inside that meeting, but I do know that we did go back to '97 after. So, it may very well have been on this issue of what was the window and -

CHAYTOR, Q.C.:

Q. So, at this point in time there hadn't been consideration to go back '97 -

MS. JONES:

A. That's what it appears in September of this year.

CHAYTOR, Q.C.:

Q. That it had started with 1999?

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. Or 1998?

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MS. JONES:

A. 1998, yeah.

CHAYTOR, Q.C.:

Q. Okay. "And we are positioned to move with a communications strategy when required". What discussion do you recall about that and what was the communication strategy?

MS. JONES:

A. Wouldn't have had that discussion inside of executive, just if, in fact, there was anything that needed to be done, that they had been working with communication. We didn't talk a lot about individual communication strategies at executive. And if, in fact, there was any real discussion, it may have been, we suggest, you know, we move in A, B or add this to it.

CHAYTOR, Q.C.:

Q. So, executive is being told that there is a communication strategy, however, in place.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And they're in a position to move forward if -

MS. JONES:

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A. If they need.
CHAYTOR, Q.C.:
Q. - required. Do you understand--what was meant by if required or when required, sorry?
MS. JONES:
A. Well, I would think that at this particular point in time because we--and I think I just said it earlier, as we are dealing with individual clients, at some point in time, it may break public.
CHAYTOR, Q.C.:
Q. So, a communication strategy, though when required, would be dealing with the issue on a public basis.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Because you have your policy on disclosure -
MS. JONES:
A. On disclosure and we know exactly what we're going to do with that when we have the information, individual clients will be disclosed.
CHAYTOR, Q.C.:
Q. So this would have to do with the disclosure

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or communication to the greater community.
MS. JONES:
A. That's right, would have been public.
CHAYTOR, Q.C.:
Q. Okay. In answering my question on the 1997 to 1998 period, you indicated that they may have gone back or thought about a window of opportunity, what do you mean by that?
MS. JONES:
A. Well, the discussion--what I know now and I'm sure that we had stopped testing and then we were pulling slides, there was a window of opportunity where Tamoxifen may be of benefit. And so that's what they were really looking at. We also have, I think, Dako coming in at 97 or 98. Which is a change in the way that we did immunohistochemistry testing.
CHAYTOR, Q.C.:
Q. Yes, from the bioassay -
MS. JONES:
A. From the bioassay to the immunohistochemistry.
CHAYTOR, Q.C.:
Q. But was there some consideration that an afterthought that maybe we could go back

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another year, do you recall that? Like, why wasn't the window of opportunity of extended?
MS. JONES:
A. No, this would have been Bob saying, we've done this and we are thinking about, obviously, do we go back to probably, in this instance, moving from the bioassay to the immunohistochemistry, but is that the actual recall, I have no idea.
THE COMMISSIONER:
Q. Ms. Jones, just so that I get a feel for how these meetings work, is this a place for a person like Dr. Williams who has a particular position to inform the rest of the executive.
MS. JONES:
A. Yes.
THE COMMISSIONER:
Q. Or is this a place where Dr. Williams says, what do you think about this or would you feel free, for example, if you were getting a report or an update from another member of the executive team and either you felt that, you know, you had information which might be beneficial to pass it along in that context, or if you thought, that's not such a hot move,

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would you, in that context, say what your opinion was?
MS. JONES:
A. The most times it was really for information, okay. As we evolved in Eastern Health, we did bring forward briefs on particular issues where we wanted decisions made.
THE COMMISSIONER:
Q. Uh-hm.
CHAYTOR, Q.C.:
Q. We wanted input. If there was a complicated issue that crossed more than one portfolio, we would come and have open discussion around it, how we were going to move forward with a particular issue; how were going to structure a particular issue. So, many times, executive is for information, but we had a process, although not always articulated, whereas we would bring a briefing note where we were looking for a decision from executive on a particular issue, that would have implications for more than just a particular area. So, -
THE COMMISSIONER:
Q. But the call would be on the person bringing the information, would it?

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MS. JONES:
A. And, yes, and most of the areas that you talk about, like human resources or even information technology or laboratory or whatever, it would have been the executive that they had responsibility for that area because I wouldn't be able to make any comment on laboratory. I might have, you know, responded to what was said, but not because I had any in-depth knowledge about that. But if, in fact, we were talking about nursing practice across the entire Eastern Health, because of my background in knowledge, I might have been able to contribute to a particular decision or an issue that might have been brought to the table.
THE COMMISSIONER:
Q. All right. Thank you.
CHAYTOR, Q.C.:
Q. Thank you, Commissioner. Ms. Jones, then as of this date, September 28, 2005, who do you understand is in charge of the issue?
MS. JONES:
A. On the lab part, it is still Dr. Williams.
CHAYTOR, Q.C.:

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Q. Okay. And what about the part dealing with the communication strategy that's referenced in the minutes?
MS. JONES:
A. He would have been working with communications on developing that strategy and how much involvement anybody else had with that. I can't speak to it.
CHAYTOR, Q.C.:
Q. And overall though, the person who would be in charge of managing that issue would be who?
MS. JONES:
A. In terms of what issue?
CHAYTOR, Q.C.:
Q. Managing the communications aspect of the issue.
MS. JONES:
A. Direction would have been taken from whether-- Bob or George Tilley in that instance because a communications strategy would have been a strategy that would have been developed by communications and it would have had to be approved by somebody to move forward with it.
CHAYTOR, Q.C.:
Q. And at this point in time, who's reporting on

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being in a position to move with a communications strategy? Is all part of Dr. Williams' presentation to the executive or is Mr. Tilley also making that assertion?
MS. JONES:
A. I can't tell you that far back.
CHAYTOR, Q.C.:
Q. So your recollection though, as to who was managing the issue from the clinical aspect, was clearly Dr. Williams?
MS. JONES:
A. Dr. Williams, that's right.
CHAYTOR, Q.C.:
Q. And in terms of the communication surrounding the issue -
MS. JONES:
A. I would have thought that there would have been a number of individuals which would have probably included Mr. Tilley at that time, as well as Bob, and I'm not even sure that maybe Mr. Steve Dodge might have been involved in some of the discussion because communication reported through that portfolio to Mr. Dodge.
CHAYTOR, Q.C.:
Q. And is that your recollection in dealing with

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the issue, that Mr. Dodge had much, if any, involvement?
MS. JONES:
A. I wouldn't have known that personally.
CHAYTOR, Q.C.:
Q. Did he ever speak to the issue at an executive management meeting?
MS. JONES:
A. Well, at executive management, you will notice that Ms. Bonnell was part of the executive management, so Ms. Bonnell would have probably been bringing forward, if in fact it came-- sorry, if in fact it came to that, to talk to the components of a program. So you see -
CHAYTOR, Q.C.:
Q. And I notice that she's -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - she's at this particular meeting, as is Mr. Dodge.
MS. JONES:
A. Dodge, that's right.
CHAYTOR, Q.C.:
Q. And what's your recollection as to who would

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speak, if necessary, to issues regarding communications around this issue?

MS. JONES:

A. Susan would have done the technical pieces of it and where we were going or what her advice would have been.

CHAYTOR, Q.C.:

Q. And she formally -

MS. JONES:

A. And this one here though says that we're positioned to move with a communication strategy, so we probably would never have even had that discussion there.

CHAYTOR, Q.C.:

Q. So I'm just wondering who would be speaking to the issue, and in any event, Ms. Bonnell would be reporting to Mr. Dodge.

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. And/or Mr. Tilley?

MS. JONES:

A. That's--no, she reported to Mr. Dodge.

CHAYTOR, Q.C.:

Q. On this issue, do you know that?

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MS. JONES:

A. I don't know that, but in terms of organizational structure, she would have reported to Mr. Dodge, but I would say to you, in terms of even in my portfolio now, there are many times that you would talk directly to the communication person, not always through the vice-president on particular issues.

CHAYTOR, Q.C.:

Q. And what's your overall sense in having sat in on those meetings as to whether or not Mr. Dodge appeared to be involved or in charge of the communications around the issue?

MS. JONES:

A. I can't respond to that like in September.

CHAYTOR, Q.C.:

Q. So you have no recollection one way or the other?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. Okay. When did you then personally have any involvement in this issue?

MS. JONES:

A. I don't believe I would have said I would have had any involvement in this issue until I took on the role that I'm in now. To say that I knew about the issue as it was evolving in terms of the media, as well as where we were with respect to reports being back and recommendations being implemented, that was more of a generic for information only, in terms of executive. But in terms of directing anything, not really, and then the only issue that would have been referred to me in a secondary fashion -

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CHAYTOR, Q.C.:

Q. That's in your official capacity.

MS. JONES:

A. I don't--only in July of this year.

CHAYTOR, Q.C.:

Q. Okay, and what about in your--you mentioned earlier in answering some of my questions, the issue of fixation.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. That came to your attention in your official capacity as COO at the time?

MS. JONES:

A. That's right, as a copy on a letter.

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. And I would have had discussion with the program director on that issue.

CHAYTOR, Q.C.:

Q. Okay. If we could look, please, at P-0729?

THE COMMISSIONER:

Q. P-0729 should be in your book.

MS. JONES:

A. Yes.

THE COMMISSIONER:

Q. If you'd prefer to -

MS. JONES:

A. I have my own book.

THE COMMISSIONER:

Q. All right, okay.

MS. JONES:

A. With all my notes in them.

CHAYTOR, Q.C.:

Q. Hope it helps. So 0729, now this is a letter. Sorry, it's an email.

MS. JONES:

A. Yes.

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CHAYTOR, Q.C.:
Q. From Denise Dunn to yourself, Maria Tracey and Dianne Clements.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. And it's dated September 29th, 2005.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. And it's "Louise, Maria, can the surgery and peri-operative program readers review, please. Thanks, Bob."
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. So Denise Dunn was who?
MS. JONES:
A. Is Dr. Williams' secretary.
CHAYTOR, Q.C.:
Q. So she's sending this obviously on behalf of Bob, being Bob Williams?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:

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Q. And this is going to yourself. Who's Maria Tracey?
MS. JONES:
A. Maria Tracey is the program director for peri-operative, which runs -
CHAYTOR, Q.C.:
Q. And who is Dianne Clements?
MS. JONES:
A. Dianne Clements was my secretary.
CHAYTOR, Q.C.:
Q. Okay, and in brackets, they're sending Dr. Felix's and Dr. Kwan's copies by fax.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay. So this is--and if we look at what the attachment is on page two, it's a letter of September 26th, 2005, Dr. Williams from Dr. Cook.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and this is September 26th 2005, so it's two days before the executive management minutes that we just looked at.

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. September 28th, 2005, and the issue that's dealt with in here is an issue regarding tissue preservation at the OR level.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Do you recall Dr. Williams, on September 28th, was this issue addressed or brought up at the executive management?
MS. JONES:
A. I can't recall whether it was or not.
CHAYTOR, Q.C.:
Q. Do you think you would recall, given that it involves the OR?
MS. JONES:
A. No, because at that time, we wouldn't have been having that sense of, you know, fixation. Just using the word "fixation" wouldn't have not--wouldn't have kind of triggered anything at that point.
CHAYTOR, Q.C.:
Q. So the first time you heard of this issue,

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it's not reflected in the minutes of September 28th that there was any discussion around this.
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. I'm just wondering then, you were sent this by email copy on September 29th, the day after your meeting.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So would this have been the first time this issue was brought to your attention?
MS. JONES:
A. Yes, it would have been.
CHAYTOR, Q.C.:
Q. Okay. So you don't recall it having been brought up in the -
MS. JONES:
A. No, and actually, I have no idea when the exit interviews were with the consultants. Dr. Cook references this as being brought up at that point in time.
CHAYTOR, Q.C.:

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Q. So they were done presumably sometime before September 26th when Dr. Cook was able to write this letter?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and if we see the handwriting up in the corner, there's handwritten notes, it looks like to Louise Jones, Maria Tracey, Dr. Al Felix, Dr. Allan Kwan.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. And I don't know if you can read the rest.
MS. JONES:
A. Surgery peri-operative, yeah, for review, which is what Denise would have sent to us.
CHAYTOR, Q.C.:
Q. Okay, and why would you be receiving this letter or a copy of it?
MS. JONES:
A. I would expect that Dr. Williams would want to make sure that I had followed up on it, because it is written to--from Dr. Cook to Dr. Williams. I would--and I would have recalled

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saying to--calling and saying to Maria, "there's a letter there, deal with it."
CHAYTOR, Q.C.:
Q. Yes, and I'll ask you about what you did. I'm just wondering why you would be getting it. So I take it it's because you are responsible for the peri-operative program?
MS. JONES:
A. Yes, absolutely.
CHAYTOR, Q.C.:
Q. And surgery?
MS. JONES:
A. Yeah, and this was something that needed to happen in this program.
CHAYTOR, Q.C.:
Q. Okay. If we just look at the content then of the letter, it says "following the exit interviews of both the medical and technical consultants," so that would be the external reviewers?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. "One of the issues identified in immunohistochemical staining of estrogen and

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progesterone receptors concerns adequate fixation of the specimen. It appears in some cases that mastectomy specimens and other breast biopsies could very well be left lying overnight or over the weekend in the OR without adequate formalin fixation."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. "I would strongly recommend," and again, this is Dr. Cook, "I would strongly recommend that all mastectomies, needle localizations and lumpectomies with axillary node dissection should be booked first thing in the morning in the OR from Monday to Friday. Ideally, these procedures should not be performed on Friday afternoons. Every effort should be made to ensure that the cases are forwarded to the lab in a timely fashion," I take it he means. "I would appreciate it if this information could be forwarded to those individuals responsible for the OR booking. Sincerely yours, Donald M. Cook."
MS. JONES:
A. Yes.

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CHAYTOR, Q.C.:
Q. Ms. Jones, prior to receiving a copy of this letter, were you aware that this could have been happening, that specimens could be left lying overnight or over the weekend without adequate formalin fixation? Were you aware of this?
MS. JONES:
A. Not personally, but it wouldn't surprise me.
CHAYTOR, Q.C.:
Q. Okay, and why is that? Why wouldn't that surprise you?
MS. JONES:
A. Because I had worked in a case room where we had, you know, placentas that would have been left after a period of time, and been moved to the pathology lab or whatever the next day or sometime over a weekend.
CHAYTOR, Q.C.:
Q. Yes, but placentas wouldn't be--any testing on the placentas wouldn't have anything to do with -
MS. JONES:
A. Yes, there is testing on placentas.
CHAYTOR, Q.C.:

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Q. Yes, but it wouldn't have anything to do with the health of the patient. So in terms of any testing on breast tissue, does it surprise you that that would be left overnight or over the weekends without adequate formalin?

MS. JONES:

A. Not knowing the actual--I would know that at the end of the day, there would be rounds to pick up, right. So you know, if there were cases after hours, okay, into the evening, into the weekend, may very well be, but there would be normal transport to the lab throughout the entire seven days of the week. So, you know, whether in fact this actually happened, I wouldn't be able to say absolutely, and how many specimens or whatever, Maria Tracey and the division managers would be able to speak specifically to that.

CHAYTOR, Q.C.:

Q. Okay. Well then, what did you do when you read this to try and determine the voracity of it?

MS. JONES:

A. Well, first, my first reaction when I read

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this is what Dr. Don Cook is asking can't be done, okay, and the can't be done was having all mastectomies, needle localizations and lumpectomies being done early in the day, because if you know anything about operating room and the flow of operating room, you usually do your large cases in the morning, followed by your smaller cases in the afternoon. So really, we could not have that kind of work flow, if in fact we were to do the work that needed to be done, from an operating room procedure. So my discussion with Maria Tracey was, okay, we know, I know, you know that all of those particular specimens can't be done early in the morning, okay. That you need to meet with Dr. Cook to find out what alternatives are there to be able to deal with their issue of fixation, and I do know that those meetings did occur and that, in fact, yes, mastectomies, needle localizations and that happened in the normal flow, but there's a process of, you know, picking up the specimens and then, you know, the person on call, if it's after hours and those kinds of things. So I do know that they

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worked their way through it, but they didn't work their way through it the way Dr. Cook wanted it to be worked through, but they did work their way through it in a satisfactory fashion that will allow them to get their specimens in the time frame that they needed to receive them.

CHAYTOR, Q.C.:

Q. Okay. So when you received this letter, your concern, what you noticed right away was that what Dr. Cook was asking for, in terms of scheduling of the procedure, couldn't happen?

MS. JONES:

A. Yeah. But there had to be some other way of meeting what he needed and they needed to discuss it out.

CHAYTOR, Q.C.:

Q. And the issue, in terms of the specimens and, I don't know, maybe it's equally important for placentas, I don't know, but I'm just thinking the idea that specimens wouldn't be in adequate formalin, did that cause you any concern and did you make any investigation or question around that?

MS. JONES:

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A. Well, Mrs. Tracey would have looked at that and I do know that they did discuss the size of the containers that they were in and you know, the percentage of formalin and those kinds of things. What I would say to you is that there is nobody in the pathology lab 365 days of the year, 24 hours a day. So there are obviously specimens, and it doesn't matter, coming to the lab at times other than when personnel are there. So this obviously was a cue to say we need a certain fixation and we need a certain formalin or size of bucket or whatever. I do know though that over the years, if there are issues with specimens, then they're dealt with on an individual basis, because the lab receives a specimen that it's not appropriate or is--you know, the container leaks or whatever. So those are dealt with on an individual basis, but we had not heard this from the lab in the past.

CHAYTOR, Q.C.:

Q. Okay. So this hadn't been brought--when I asked you initially whether you were aware of this before, you said not personally.

MS. JONES:

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A. No.
CHAYTOR, Q.C.:
Q. But had this been brought to anybody's attention?
MS. JONES:
A. The individual issue of a specimen maybe not being fixed in the way may very well have been brought through, but it would be division manager, not necessarily Maria Tracey, who would know that.
CHAYTOR, Q.C.:
Q. And have you heard that? Have you heard that -
MS. JONES:
A. No, I have not heard it.
CHAYTOR, Q.C.:
Q. - there were issues brought to the divisional manager regarding fixation of specimens prior to this?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. Okay. Would there not be--and I understand that you're saying that it would be up to the lab to indicate if there's an issue -

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - regarding the size of the bucket, the amount of formalin or whatever, would there not be protocols in place though in the OR as to preservation of tissue?
MS. JONES:
A. There would have been--the operating room responsibility is to secure--take the tissue, whether it be the mastectomy, it doesn't matter, we're talking breast here, or the biopsy, and to put it in a solution that was actually identified or there would be some tissue that you would not be putting in formalin because it had to be processed in a different way. So they would have had direction on which needs to go into formalin, which doesn't need to go into formalin, and those directions would come from the lab themselves, right. That is not an area of expertise that nursing would have. They would take direction based upon what it is that the receiving department would actually need in terms of the processing for their specimens.

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CHAYTOR, Q.C.:
Q. Are you taught, as part of your nursing training, the importance of tissue preservation?
MS. JONES:
A. My training goes back 30 odd years and I don't remember that.
CHAYTOR, Q.C.:
Q. Do you know whether or not it's part of the training now?
MS. JONES:
A. I would say that it probably isn't part of the training, but in terms of your orientation to a particular work area, in terms of specimens, bottles, formalin, all of those kinds of things, that's part of the on-the-job training.
CHAYTOR, Q.C.:
Q. You would expect nurses working in the OR would be familiar -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - with the importance of tissue preservation?
MS. JONES:

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A. Absolutely, because that is part of the job that they do.
CHAYTOR, Q.C.:
Q. Yes.
THE COMMISSIONER:
Q. That is the job of the nurse though, is it?
MS. JONES:
A. The nurse would take the specimen and put it in a container, and she would need to know how much or the formalin content or some specimens go dry. They do not--are not put in any kind of a fixative.
THE COMMISSIONER:
Q. But the responsibility for dealing with tissue that is removed in the OR is that of a nurse, not somebody else in the OR?
MS. JONES:
A. It is of a nurse.
THE COMMISSIONER:
Q. All right, thank you.
CHAYTOR, Q.C.:
Q. And who gives that direction to the nurse? How does the nurse know how much formalin and the appropriate formalin?
MS. JONES:

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A. Well, that wouldn't be coming from anywhere in nursing policy. It would come from a lab perspective as to what--does it need to be covered, totally covered, you know, formalin, how much, how big, those kinds of things.

CHAYTOR, Q.C.:

Q. And we know that there is or there's certainly a draft new policy to deal with this issue.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Do you know was there any policy or protocol standard of practice in place prior to the new one that we've seen drafted?

MS. JONES:

A. That's best answered by Mrs. Tracey or the division managers. I don't know personally at the time.

CHAYTOR, Q.C.:

Q. So whether or not there was, you're not able to speak to that?

MS. JONES:

A. No, I would speak to the fact that we would have had a practice. We would have been using it for years and years and years, and that if

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there were issues with the way a specimen was received, and it doesn't matter whether it's a specimen in formalin or any other specimen that we would send to the lab, that the lab dealt with it individually with either the user or the manager.

CHAYTOR, Q.C.:

Q. And in terms of you were aware that specimens could be left for a long period of time, overnight or over the weekend?

MS. JONES:

A. Well, certainly overnight.

CHAYTOR, Q.C.:

Q. Right, in your own clinical practice. Would that have been without adequate formalin as well?

MS. JONES:

A. They would have all been put in formalin then. There is--you know, depending on where you worked, it would have been a certain size bucket that would have whatever, right.

CHAYTOR, Q.C.:

Q. So the issue of the specimen being left without adequate formalin, were you surprised by that?

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MS. JONES:

A. I don't see that really here. It's breast biopsies could well be left lying overnight or -

CHAYTOR, Q.C.:

Q. Or over the weekend in the OR without adequate formalin fixation.

MS. JONES:

A. Yeah, and that's -

CHAYTOR, Q.C.:

Q. So that's what I'm referring to.

MS. JONES:

A. Yes. I can't really comment any more on that, except to know that if there was inadequate fixation or formalin, then that would have been brought to the attention on the individual specimen.

CHAYTOR, Q.C.:

Q. But it didn't particularly jump off the page to you that it was without adequate formalin fixation?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And at the time you read this?

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MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And did you speak to anyone about that to find out -

MS. JONES:

A. Well, that was what I would have spoke to Maria about, right.

CHAYTOR, Q.C.:

Q. So you would have asked her whether or not that was the case, that they had left specimens without -

MS. JONES:

A. Had they had any issues that the lab had brought forward to their attention.

CHAYTOR, Q.C.:

Q. And what--but did she--okay, that's one issue, whether or not the lab brought it to their attention, and you said that she said no to that, it hadn't been brought to their attention?

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. But the issue of specimens being left without

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adequate formalin fixation, did you ask Maria was that happening?

MS. JONES:

A. In the sense of, okay, has anything been brought forward to your--basically, she would have said "we have done this procedure for years. We teach it as part of our orientation and nobody has brought issues to our attention." So in that--in responding to that, then she would have been responding to whether in fact there had been issues with inadequate fixation.

CHAYTOR, Q.C.:

Q. So you are the person who ultimately would be responsible for the program. Were you satisfied by the responses that you got from Maria Tracey on this issue?

MS. JONES:

A. Yes, I was.

CHAYTOR, Q.C.:

Q. Okay, and so her response to you was "well, we've been doing this for a number of years and nobody's brought it to our attention that there's been anything inadequate in what we're doing?"

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MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. And those were her responses?

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. And whether or not there was a written protocol or policy in place as to how to deal with breast specimens, in terms of the amount and type of formalin, you're not aware of that?

MS. JONES:

A. I'm not aware of that, and I wouldn't have to because it's a very specific operating room policy. That would be something that the division managers and program directors would sign off on, would not come to a higher level.

CHAYTOR, Q.C.:

Q. So would you expect though that there would be such a protocol in place?

MS. JONES:

A. I would expect lots of--that there would have--that people would have been orientated to what for particular specimens would have been,

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so part of an orientation. In terms of working in that environment, given that that was the type of work that you do every single day.

CHAYTOR, Q.C.:

Q. And obviously they deal with hundreds of different specimens.

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. So would it be good practice that you would expect that to be reduced to written protocol?

MS. JONES:

A. I would expect that there would be some protocol written around, because there are some specimens that are dry specimens and some specimens that are fixed specimens. So I'm sure that that exists.

CHAYTOR, Q.C.:

Q. You would expect that there would be something in writing, otherwise you have a new person coming through being oriented and not having anything other than their memory to rely on if there's nothing in writing?

MS. JONES:

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A. Yeah, and that's why I say I would expect that the dry versus the fixed specimens would very well be written.

CHAYTOR, Q.C.:

Q. And whose responsibility is it ultimately to see that those protocols or SOPs are in place?

MS. JONES:

A. That would be the program director.

CHAYTOR, Q.C.:

Q. Program director, who at that point in time was who?

MS. JONES:

A. It was Maria Tracey.

CHAYTOR, Q.C.:

Q. And who does Maria Tracey report to?

MS. JONES:

A. She reports, in this instance, to me.

CHAYTOR, Q.C.:

Q. And what does it mean for Maria Tracey to report to you?

MS. JONES:

A. That whatever she needs to do to ensure that her program is operating, that she has those policies, procedures in place, any interactions that she need in preparation for

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budget, for those kinds of things, that I would be aware of, any issues that she has that were not able to be resolved at her level that needs senior executive involvement across portfolios, in fact that I would be involved in that. That she has responsibility for ensuring that she stays on budget, okay. If she's not able to stay on budget, then what is the variance and the explanation for that. That she's responsible for ensuring that equipment and that that is used in her operating rooms is up and functioning, that her staff are educated and that they're licensed to be able to do their work.

CHAYTOR, Q.C.:

Q. And if Maria Tracey hasn't done any element of her job or hasn't done it adequately, whose responsibility is that?

MS. JONES:

A. I would end up having to discuss that inside performance appraisals. We would have monthly reports. She would be--have objectives for the run of a year that we would evaluate as we move forward and being in line with the strategic plan. So I would be doing a yearly

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evaluation.

CHAYTOR, Q.C.:

Q. And this issue as to whether or not there were any written SOPs or anything, whether or not the adequacy of the SOPs, has that been an issue that you've addressed with Maria Tracey?

MS. JONES:

A. No, it hasn't.

CHAYTOR, Q.C.:

Q. And do you know--and you don't know the answer, whether or not there were or were not such written policies in place?

MS. JONES:

A. No.

THE COMMISSIONER:

Q. Wherever there is a convenient spot, we can take the morning break.

CHAYTOR, Q.C.:

Q. Actually, this might be a good spot, thank you.

THE COMMISSIONER:

Q. All right then. Take 15 minutes.

(BREAK)

THE COMMISSIONER:

Q. Please be seated. Ms. Chaytor.

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CHAYTOR, Q.C.:

Q. Thank you, Commissioner. Commissioner, I have a number of other exhibits that we will be referring to.

THE COMMISSIONER:

Q. Okay.

CHAYTOR, Q.C.:

Q. And those weren't ready--I apologize, those weren't ready earlier this morning, or have just come up. There is P-0776, P-0777, P-0778, actually it goes right through to P-0830. So it's 0776 through to 0830--sorry, see if this is right. No, that's wrong. It's 0776. My note says 0776, 0777, 0778, 0779, and that must be 0800, yes.

REGISTRAR:

Q. 0780.

CHAYTOR, Q.C.:

Q. I'm sorry, 0780. My note says 080, so yes, 0780, 0781, through to 0783. 0782, 0783. Have an extra zero.

THE COMMISSIONER:

Q. Okay. So in effect what you're seeking to have admitted are Exhibits P-0776 through to 0783 inclusive?

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CHAYTOR, Q.C.:

Q. That's correct. Thank you.

THE COMMISSIONER:

Q. Okay.

EXHIBITS ENTERED AND MARKED P-0776 THROUGH P-0783

CHAYTOR, Q.C.:

Q. And these are documents which obviously have been disclosed to the parties, but were not included in the exhibits for Ms. Jones, or some or all of them may not have been. So we will have hard copies for the parties this afternoon.

THE COMMISSIONER:

Q. All right.

CHAYTOR, Q.C.:

Q. They'll get them lunch time.

THE COMMISSIONER:

Q. Thank you.

CHAYTOR, Q.C.:

Q. Ms. Jones, when we left, we were looking at Exhibit 0729.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And I just--I want to understand the context

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then and what was happening in terms of this issue from your point of view, at the time you would have received this letter, September 29th 2005.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And you know at this point in time, obviously, we've looked at the executive management meeting minutes and you're aware that there is--you're aware of the scope of the problem. You're looking at a ten-year review of tests. It's many, many hundreds or certainly a lot of patients involved.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And you'd be aware of that at the time, and they involve patients obviously all over the province, because -

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. - the minutes referred to waiting for the samples to come in from other regions, and

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this letter would have been telling you that the external reviewers who came in here identified fixation as a problem. That's correct?

MS. JONES:

A. Yes, from the exit interviews, this letter says that.

CHAYTOR, Q.C.:

Q. Yes, and you would have been aware that they were in here or in to Eastern Health regarding the ER/PR issue?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And I'm just wondering then, when you read this, and it's not a very long letter, and in terms of samples being left or specimens being left overnight or over the weekend without adequate formalin fixation, that didn't ring any alarm bells for you?

MS. JONES:

A. I think that what you need to understand is that that particular issue would have had resonance probably with somebody who was working in an operating room or a lab, not

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necessarily every other nurse in the organization. So yes, the issue of fixation, we do understand that specimens have to be fixed, but standards would change over time. As I had indicated, when I worked in a case room, and I used the placenta, but we used placenta for genetic testing on still births and all of those kinds of things, so they were just as significant as well. So at the end of the day, what was the policy over a period of time, had the standards changed. You know, was there minimum period, was there maximum period, those kinds of things, would not have had any resonance with me. But it certainly probably had resonance with the people who are working at this and that was part of every bit of their daily work, part of the normal routine of what they do.

CHAYTOR, Q.C.:

Q. Yes, and that's been identified as an issue, it appears anyhow from this letter -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - by the external reviewers.

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MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. People independent of the organization who've come in have identified this as an issue.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And so I'm just wondering, why you didn't bring that up with Maria Tracey to ask her, "what are we doing? Are we--what policies do we have in place to make sure there is adequate formalin fixation?"

MS. JONES:

A. I think that what you need to hear me say and what I would have said to Maria is "the bookings can't happen, and what are the other issues that are there? So do whatever needs to be done," in like that way. I had worked with Maria for well over ten years, so when I would say to Maria "this here is an issue. What is--you know, what's going on? Deal with Don Cook," okay, on an individual issue, and it was only if, in fact, there was any issue that she wasn't able to resolve that it would

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come back, and it would have come back to me and Don Cook would have brought it back to Bob Williams and then we would have had a discussion. So we never got involved at the executive level with issues that were dealt with or could be dealt with at the individual program director level. In this instance what you had was an individual physician, a lab program actually dictating to a peri-operative program how to do its work, that can't happen because if we're to flow everything through, then they have to work in concert. What they did do was find a way around the issue that Dr. Cook had identified -

CHAYTOR, Q.C.:

Q. On a go forward in terms of -

MS. JONES:

A. On a go forward basis -

CHAYTOR, Q.C.:

Q. - scheduling the ORs -

MS. JONES:

A. Absolutely.

CHAYTOR, Q.C.:

Q. - yes, I understand that. But I'm just wondering about what about what had already

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happened and the fact that the external reviewers are identifying this fixation issue, I'm wondering what happened in terms of then your discussions to find out if, in fact, this was an issue and why it was an issue in the peri-operative program?

MS. JONES:

A. And I think that I've kind of answered that question in being that if there were issues with respect to fixation, then that would have come back to the individual program at the time that the issue had arisen and it had not been brought forward. I don't know because it's not an area that I would have full familiarity with, whether there had been a change in fixation, whether there, in fact, had been a period of time because I do understand that, in fact, fixation has to be for a certain period of time, in some of these specimens for three hours, no more than 24, those kinds of things. Whether they were standards in the year 1997 or had evolved over time with particular issues with respect to breast specimens, that I think you really need to talk to the people in the area that were

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looking at fixation. Maybe, maybe it was acceptable to leave them overnight. It had never been brought to our attention before. Maybe in today's standards maybe there is new benchmarks or new guidelines.

CHAYTOR, Q.C.:

Q. But it wouldn't, I take it, be acceptable to ever leave them without adequate formalin fixation?

MS. JONES:

A. Yes. And the question is what was adequate formalin fixation. My background knowledge in nursing would basically say that the tissue had to be covered.

CHAYTOR, Q.C.:

Q. Right.

MS. JONES:

A. And that was the extent of it.

CHAYTOR, Q.C.:

Q. And did you ask Maria whether or not that, in fact, was happening?

MS. JONES:

A. I'm sure that Maria would not have actually had that level of detail because that would have been the standard, the orientation that

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that is, in fact, how you put specimens in, that they had to be covered.

CHAYTOR, Q.C.:

Q. My question is whether or not you asked -

MS. JONES:

A. I would not have asked -

CHAYTOR, Q.C.:

Q. - that of Maria?

MS. JONES:

A. - that question. I would have said, "Is there an issue?"

CHAYTOR, Q.C.:

Q. You would have said, "Is there an issue with the adequacy of the fixation, the amounts or types or whatever? What could this mean?"

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. Did you ask her those questions?

MS. JONES:

A. I would have said to her, "Are you aware," like I said to you, "Are you aware of any issues that have been brought to your attention with respect to fixation."

CHAYTOR, Q.C.:

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Q. Whether or not the lab had brought the issue to their attention -
MS. JONES:
A. Or whether, in fact, she was aware of it.
CHAYTOR, Q.C.:
Q. Right. Whether or not she was aware of whether or not there was an issue?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. In terms of adequacy of the fixation?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. You asked her that?
MS. JONES:
A. Yes, I would have asked that. There's two issues in this letter and those -
CHAYTOR, Q.C.:
Q. Yes, the scheduling is the one that you said, you know, immediate -
MS. JONES:
A. That would -
CHAYTOR, Q.C.:
Q. - you thought of -

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MS. JONES:
A. That would have been the immediate -
CHAYTOR, Q.C.:
Q. - that that couldn't happen?
MS. JONES:
A. That couldn't have happened.
CHAYTOR, Q.C.:
Q. Right. But I'm just interested now in the issue of that was going to be the solution to the problem. The scheduling of the ORs was being put forward by Dr. Cook as something he was strongly recommending as the solution to the problem. But the actual problem itself, I'm wondering what inquiries you made to figure out how that could have been the case?
MS. JONES:
A. And what I do know is is that the specimen bottles, okay, because this was brought back to me, the specimen bottles on biopsies were increased in size, okay. So there was a direct response back on what we actually did.
CHAYTOR, Q.C.:
Q. Right. And so in terms of what was happening in the past, what were you able to ascertain in terms of what was happening and whether or not it was up to standard?
MS. JONES:
A. Well, I would say to you that the specimen bottles that we were using for biopsies had been used for significant period of time, okay. And through this process at the end of the day they had agreed that they needed larger specimen bottles. So if that was the case, then I--and the specimens would have been in that particular bottle, then it would have been covered with formalin. I, you know, that is the extent of what I know about it.
CHAYTOR, Q.C.:
Q. And in terms of what Maria told you about whether or not there was adequate amounts of formalin being used, what did she tell you?
MS. JONES:
A. I have no recall on adequate amounts of formalin.
CHAYTOR, Q.C.:
Q. Okay. So the adequate formalin fixation that's referred to here, did you have any discussions with her on that?
MS. JONES:
A. I think I would just go back to saying the

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same thing. I would have said to her, "What is the issue here?" okay, "Is there an issue?" She wasn't aware of an issue. To check it down and check it out and at the end of the day there was a decision to move to a larger biopsy, bottle for biopsies, all right. And so -
CHAYTOR, Q.C.:
Q. So you didn't actually -
MS. JONES:
A. - that's all I can say.
CHAYTOR, Q.C.:
Q. - get to saying, "Well, Maria, what are we doing right now? What is it? Show me whatever protocols or tell me whatever protocols are in place and let's see how that compares to" -
MS. JONES:
A. And I would not have -
CHAYTOR, Q.C.:
Q. You wouldn't do that?
MS. JONES:
A. That would not have--at the COO level or the executive level that would never have been the level of detail that we would have been asking

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on any policy or any procedure. You would have a program director who would be responsible for insuring that they understood what was going on in their area and then having the policies or working out the issues that they had.

CHAYTOR, Q.C.:

Q. Yes. And how did you assure yourself that that, in fact, was happening?

MS. JONES:

A. Through the follow-up meetings with her. I would have had this particular letter in her file every month when I met with her and as we go through the monthly meeting, anything that was there I would have said, "Now, is this resolved?" And so that would have been the way that I deal with my program directors in terms of ongoing resolution of issues that might be there and it's always a come-forward file, okay. So I look at my notes from the last time, as well as what's in the file, and say, "What was actually done?"

CHAYTOR, Q.C.:

Q. And I understand that and I understand that, you know, you have to be at a certain level.

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But when an issue comes to your attention that involves potentially hundreds of patients and there's an issue identified by people external to your organization which fits within your area of responsibility and the person who is responsible, you're tell me, the program director, would be responsible for making sure -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - that the proper procedures were in place.

MS. JONES:

A. Absolutely.

CHAYTOR, Q.C.:

Q. I'm wondering then, a problem has happened, what would your responsibility be to oversee or see that, in fact, she has done her job properly?

MS. JONES:

A. And, in fact, that was done by what I have just explained to you, by identifying it, talking to her, and asking her at the end of the day if, in fact, they resolved their issue with Dr. Don Cook and, in fact, what was the

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outcome of that. This here, as you well understand, is one of many issues that were identified and whether, in fact, it was, you know, it would have--may have been a contributing factor to what had gone on, I'm not sure. But this is one issue that was brought forward that we did follow through on, that we did change the--we did change the pick-up schedule for pick up of specimens, we did change the bucket size for small specimens, not for large specimens is my understanding, and, in fact, that there is a-- the practice was reinforced.

CHAYTOR, Q.C.:

Q. Okay. So, Ms. Jones, if it turns out that, in fact, fixation was a significant issue in this matter, how that came to be and whether or not the practice of the peri-operative program at the time was current practice or best practice, you don't know?

MS. JONES:

A. I wouldn't know that. And I would expect that that practice had it changed over time, there may have been new standards, there may have been new research. And that, that then, as I

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had indicated right from the beginning, if in fact there was inadequate fixation, the staff in the operating room would never have known that. It would have had to come back from the lab who actually got the specimen and processed the specimen. There's no way that nurses would know whether, in fact, an actual specimen was inadequately fixed.

CHAYTOR, Q.C.:

Q. But in terms of knowing to have the specimen covered in formalin -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - they would know that?

MS. JONES:

A. They would know that.

CHAYTOR, Q.C.:

Q. They would know to do that?

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. And to your knowledge was that happening?

MS. JONES:

A. That is too far down in the organization. I

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would know that people were orientated to -
CHAYTOR, Q.C.:
Q. So you haven't asked that?
MS. JONES:
A. I haven't. They would have been orientated and know that that was the process on specimens.
CHAYTOR, Q.C.:
Q. I understand how this cuts across portfolio and you're saying that the OR would be relying on the lab to -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - come back if there was any issue?
MS. JONES:
A. Um.
CHAYTOR, Q.C.:
Q. And your communication at that level would be with Dr. Williams?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And he's responsible for the lab through the chain -

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And you sit around the same table with Dr. Williams at executive management?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So did you discuss this issue with Dr. Williams?
MS. JONES:
A. No. He would have--if, in fact, there was an issue that Maria and Dr. Cook were not able to resolve, then Maria would have brought it to me and I would have had a discussion with Bob, not necessarily inside of executive, I may have called him and said "What you were asking is can't be done," but, "and we have not been able to resolve an issue," but at the end of the day we were able to resolve an issue, so it would not have come back to us.
CHAYTOR, Q.C.:
Q. Okay. So did you ever discuss this issue with Dr. Williams?
MS. JONES:

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A. No.
THE COMMISSIONER:
Q. Excuse me, but there was something you said about a minute ago that I just didn't want to slip by. Maria Tracey, is that -
MS. JONES:
A. Yes.
THE COMMISSIONER:
Q. Yes. In the context of answering one of Ms. Chaytor's questions did I hear you to say that you would not expect her to have the detailed knowledge of what is required, either, is there someone below her?
MS. JONES:
A. There are division managers. That where the individual complaints would have been coming from the lab to her manager on the site in the operating room, either one of the operating rooms. And she would have then been apprised if there was an issue that was--that they were not able to resolve.
THE COMMISSIONER:
Q. Okay. So now, forgive my ancient terminology. But is a division manager what used to be the head nurse in the OR?

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MS. JONES:
A. Yes.
THE COMMISSIONER:
Q. Okay. So as I understand what you were saying, is that the person who really knows what is going on vis-a-vis the lab and the OR regarding the handling of specimens, would be the head nurse in each of the individual ORs?
MS. JONES:
A. Absolutely.
THE COMMISSIONER:
Q. And it seemed to me that what you were also saying was that problems between the lab and the OR are dealt with on an individual basis?
MS. JONES:
A. That's right.
THE COMMISSIONER:
Q. What happens if the individual problem keeps getting repeated in other ORs?
MS. JONES:
A. Then what would happen is is that the--if there was an issue that was unable to be resolved, then it would be brought up to the program director who would deal directly with the program director for laboratory

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management. So we handle issues at the lowest level in the organization where they can be resolved. If they're unable to be resolved, then it would be brought up to the program director. If it couldn't be resolved at the program director, maybe it's a resource issue, whatever, then it would come up to the COOs or the VP, depending on where it was in the organization.

THE COMMISSIONER:

Q. What I'm thinking about probably as is obvious is that just looking at it from a perspective of one who might say, okay, what kinds of problems are there in dealing with specimens from the point that they are taken until they get to the lab.

MS. JONES:

A. Yes.

THE COMMISSIONER:

Q. Is there some method of insuring that problems which are resolved which are we don't do this with this kind of specimen or we're reminding everybody that that kind of specimen has to be done at this level is communicated from one division manager to another so you don't need

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it to happen five times before it gets corrected?

MS. JONES:

A. What you would be doing, because the program directors have meetings with their division managers, group meetings, that kind of information would be communicated in that vehicle. And if, in fact, there was a need for policy direction in terms of nursing, then those policy would be across all. So it would be the operating rooms, the adult operating rooms that that would be the same policy in the two operating rooms.

THE COMMISSIONER:

Q. Okay. Ms. Chaytor.

CHAYTOR, Q.C.:

Q. So do you know, was this an issue involving more than one site?

MS. JONES:

A. Yes, it would have been an issue with more than one site, because we do breast, majority of it on one site, but both, both sites do do breast surgeries.

CHAYTOR, Q.C.:

Q. So you indicated you hadn't had a discussion

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with Dr. Williams regarding this, the concerns expressed in this letter. Did you speak to anyone else other than Maria Tracey about this?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And you say that measures were taken to accommodate the surgeries on a go-forward basis?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And the details of that and what resolution was achieved, you're not familiar with those details?

MS. JONES:

A. The details, as I said, was looking at bucket sizes to make sure that there was actual size appropriate to specimen. And there was also a portering schedule put in place that would allow pick ups within the particular periods of time, as well as dating and timing on specimens.

CHAYTOR, Q.C.:

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Q. Okay. And in terms of the scheduling of the surgeries, what resolution was reached to that?

MS. JONES:

A. There was, because we put in a portering pick-up system from the--from pathology forward, there was no real need to change the scheduling of the surgeries.

CHAYTOR, Q.C.:

Q. Okay. And why is it again that the--Dr. Cook's recommendation wouldn't work, why couldn't they--he's suggesting that it happen first thing in the morning, that those types of surgery happen first thing in the morning and that they not take place on Fridays?

MS. JONES:

A. Monday to Friday, it says, the first thing in the morning. They could take place on Friday.

CHAYTOR, Q.C.:

Q. Right. Oh, yes.

MS. JONES:

A. So the reality is is -

CHAYTOR, Q.C.:

Q. Oh, yes, it's Friday afternoons.

MS. JONES:

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A. Yes.
CHAYTOR, Q.C.:
Q. Suggesting -
MS. JONES:
A. The reality is is that a surgeon books their OR schedule based upon how they want the flow for the day, okay. So if, in fact, we had a general surgeon who had--we have at least one surgeon who has a breast speciality, so she would be probably operating on breasts all day long. And when you talk about that, it would be either biopsies or mastectomies, okay. We have some general surgeons that do breast as well as other things, so in some of those they may very well have to be--they could very well be rearranged in that fashion, but it couldn't be accommodated across the board.
CHAYTOR, Q.C.:
Q. Okay. And are the breast surgeries, the mastectomies, are they considered a large surgery, are they considered to be a large operation, a small operation?
MS. JONES:
A. The biopsies would be, take a lot less time than mastectomies.

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CHAYTOR, Q.C.:
Q. Right. But in terms of the overall scheme of what happens in the OR in terms of comparing it to other procedures?
MS. JONES:
A. I think that what you need to talk about is what the physician profile would be. There would be a limited number of surgeons who would be doing mastectomies, okay, they would be a small profile inside of the organization. But those surgeons work on a daily basis, they don't work every single morning, they work maybe a Tuesday and a Friday morning or two OR days. So it really is the profile of the surgeon that you need to be talking about and not how many mastectomies or biopsies because it really depends on the work that they would do in the operating room in a day.
CHAYTOR, Q.C.:
Q. So that's the issue as opposed to -
MS. JONES:
A. That's the issue.
CHAYTOR, Q.C.:
Q. - how long the surgery takes, that's not the issue?

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MS. JONES:
A. That's not the issue.
CHAYTOR, Q.C.:
Q. If we could look then, please, at P-0764? Now, Ms. Jones, P-0764 with the Eastern Health logo is a policy, it's indicated to be Fixation Policy, Medical Services (Laboratory)."
MS. JONES:
A. Um.
CHAYTOR, Q.C.:
Q. And we see "draft" written right through the document?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Do you know, is this policy now adopted or is it still in draft?
MS. JONES:
A. I can't tell you whether it is adopted formally, but I can tell you that this is the one that we are using.
CHAYTOR, Q.C.:
Q. Okay. So whether there's a formal, the written policy adopted, you're not sure of,

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but this, in fact, what's written here -
MS. JONES:
A. Is the practice.
CHAYTOR, Q.C.:
Q. - is now the practice?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay. And it's now, it's now almost three years since the external reviewers would have raised this issue?
MS. JONES:
A. Um.
CHAYTOR, Q.C.:
Q. And you're not able to say whether or not the formal policy has been adopted?
MS. JONES:
A. I think that what you'll see here is the new templates that we have for policy direction because in the top corner you have med lab with no numbers.
CHAYTOR, Q.C.:
Q. Yeah.
MS. JONES:
A. So this is the move from an old policy format

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into the new policy format. And the -
CHAYTOR, Q.C.:
Q. So do you know if this was, in fact, the policy at the time in 2005 when the issue was detected?
MS. JONES:
A. I would say that this a change in policy because there are some very distinct, if you go to the bottom of this.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. There are some very distinct references to policies here.
CHAYTOR, Q.C.:
Q. And Catherine Parnell is the quality management coordinator, she's fairly new in that position?
MS. JONES:
A. I don't know who Catherine Parnell is, okay.
CHAYTOR, Q.C.:
Q. You don't know who she is in your organization?
MS. JONES:
A. No.

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CHAYTOR, Q.C.:
Q. Okay. So she's--so this is--whether or not this--you do say this is a new policy or they're certainly changes to the policy?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And but you're not sure if it has, in fact, been adopted and when it came into being?
MS. JONES:
A. And whether--if you look to the bottom of that linkage, okay, it references all other policies that would have either cross reference or be referenced in this. And I note that the other policies that are here all have numbers associated with them, so therefore inside of my, what I would believe to be and it's only, you know, seeing this in the last couple of days, is is that absolutely, if these have got numbers into them, then they're assigned.
CHAYTOR, Q.C.:
Q. Right, yeah.
MS. JONES:
A. Okay. And they are policies that are in

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effect.
CHAYTOR, Q.C.:
Q. The ones that are linked here?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. Right, which includes your fixation procedure for OR staff and your tissue handling for lymph node biopsies, frozen sections, all of those kinds of things.
CHAYTOR, Q.C.:
Q. Right. So this one in terms of the fixation policy medical services laboratory at least what we have here is still indicated to be draft and no numbers, you say, in the corner?
MS. JONES:
A. And it would probably be an over arching policy where all of the rest of them feed into in some way.
CHAYTOR, Q.C.:
Q. Right. So if it's the practice and this is what's being followed, why isn't it the policy, why hadn't the policy been signed off

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if it -
MS. JONES:
A. I think that you might need to ask somebody other than maybe Dr. Howell. We are in the process of reformatting all of our policies into Eastern Health policies. This obviously is in Dr. Howell's day, which is since the fall of 2006, okay. And there is probably a predecessor policy that still sits in place.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. Okay. And the way that we work is is that all previous policies are in place until they are overridden by a new regional Eastern Health policy.
CHAYTOR, Q.C.:
Q. Okay. So if this policy hasn't been adopted, how would the nurses and the other people in the system, how would they know that this is the practice and not the old policy?
MS. JONES:
A. Well, if you look at the linkages here, you've got fixation procedures.
CHAYTOR, Q.C.:

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Q. Yes.
MS. JONES:
A. And I would suspect maybe that if you look at those policies, that they would have components that are in here. This is an overall policy.
CHAYTOR, Q.C.:
Q. Right.
MS. JONES:
A. That talks about the overview and then a policy statement, all right.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:
A. And then the purpose of the statement.
CHAYTOR, Q.C.:
Q. And it says that the overview is "Fixation is the most important step for paraffin-embedded human tissues."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. "Inadequate fixation may adversely affect proper assessment, diagnosis, immunohistochemistry procedures and

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interpretation. Inadequate fixation includes under and over fixation of tissues in formalin." And then there's a comment on safety precautions.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. And if we come down under "Policy," "All tissues requiring formalin fixation must be placed in formalin as soon as possible an no later than 30 minutes after removal from the body. Small tissue samples such as biopsies must be fixed in formalin for no less than three hours and up to 24 hours before processing."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And then the larger tissues.
MS. JONES:
A. Twenty-four and forty-eight.
CHAYTOR, Q.C.:
Q. Twenty-four to forty-eight hours before processing. And then we have in bold, "If the appropriate fixation time is not met, the

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following statement will be attached to this final specimen report, 'Pathology results may be adversely affected due to improper tissue fixation.'"
MS. JONES:
A. Um.
CHAYTOR, Q.C.:
Q. And then if we come down under "Procedure", it's very specific in terms of ten percent buffered formalin?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. "If a breast specimen is removed after regular hours, call the pathologist on call."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So I take it this must be instructions being given to people in the OR?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Right, okay. And "The date and time of fixation must be documented on the

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requisition."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. And you're saying the status of this particular document, Dr. Howell would be the person who could better answer our questions?
MS. JONES:
A. Better answer the questions about that and all of the other supporting documents as to at what point in time they were adopted, okay. And this would have been the practice that was discussed and agreed upon as the organization moved forward with this fixation issue, okay. The on call, call the pathologist, no more than, dating and how many of the individual elements that are in this would have been in previous direction and practice.
CHAYTOR, Q.C.:
Q. You -
MS. JONES:
A. I can't speak to that.
CHAYTOR, Q.C.:
Q. You haven't had that conversation with anyone or done that check?

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MS. JONES:
A. No.
THE COMMISSIONER:
Q. Just as a matter of curiosity, would policy such as this now be communicated via computers or are there paper copies in rooms or how are these things communicated to people now?
MS. JONES:
A. This here, when we get a policy approved, okay, we do not have a computerized system, okay, to do that. We will send out policies. We're still working from a paper-based system.
THE COMMISSIONER:
Q. Um-hm.
MS. JONES:
A. We have had a review as we've gone into Eastern Health with respect to software and that with respect to moving forward with a computerized system and a full library and a logging and all of that kind of thing. And we haven't gone down that road at this point in time because of the cost associated with it. And you would see it probably--we looked at Trim software as being one of the kinds of vehicles that we would use. So right now we

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have an individual who works inside the senior planning office that is responsible for policy and procedure redevelopment from the templates, from the numbering system, from cataloguing, from maintaining; we have a policy committee that reviews all global policies to make sure that they're consistent in that; and we have a policy framework. But the individual, we would still have individual books like this and we would have responsibility for the managers in the areas to remove all policies, put new policies in and in many of the areas you would have a sign-in kind of sheet once a new policy is in to make sure that staff have actually read the policy and are aware of the policy. And depending on the nature of the policy, we would have in-service education, as well.
THE COMMISSIONER:
Q. There are computers in each of your sections in the hospital, are there not?
MS. JONES:
A. Yes, but not covered by all staff. Because if we're talking about policy, procedure for certain types of staff that we would have,

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they wouldn't have access to individual kinds of computers. Some of your group departments wouldn't have those kinds of access. So that's what--we do have computers, yes, in every area.
THE COMMISSIONER:
Q. Um-hm.
MS. JONES:
A. But not so that they're readily accessible for certain types of staff.
THE COMMISSIONER:
Q. Ms. Chaytor.
CHAYTOR, Q.C.:
Q. Yes. Ms. Jones, this document seems to speak specifically or the two examples that it gives is it gives the example of breast.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And I believe it mentions colon as well, for larger tissues such as breast and colon?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And of course, under the procedure, it

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specifically refers to "a breast specimen removed after regular hours, call the pathologist on call."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So it seems to speak specifically to breast specimens of a larger nature in any event, as to perhaps biopsies. Do you know, did this policy--has this policy come about or the drafting of this policy come about as a result of the ER/PR issue?
MS. JONES:
A. I can't speak to that specifically, but I would anticipate given that you've got things, such as three to 24 hours, greater than 24 hours in here, and if you look at the linkages down here, there are many other kinds of specimens that are listed.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. And basically what this particular policy will say is the procedure around the formula, okay, and then the handling and then it specifically

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speaks about breast because I would suspect and not having a real knowledge in this area, that there have been some change in standards or some understandings now in latter years or even in the last couple of years, that talks about this three verses 24 hours, which may not be as sensitive for other kinds of things, like limbs or kidney biopsies or those kind of things.

CHAYTOR, Q.C.:

Q. And when that change in standard came into being and whether or not the practice at Eastern Health was in keeping with the timing of the change in standards, you don't know?

MS. JONES:

A. I have no idea and I would suspect that if we were to ask the reviewers here, that is one of the things that they had brought forward. Maybe there was new literature that talks about particular breast specimens, but that would be really for Dr. Banerjee and then to have said and whether it was in the literature before that, I can't answer that.

CHAYTOR, Q.C.:

Q. And none of the linkages speak specifically to

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mastectomies, we have pathology, tissue handling, breast specimen, needle, localization, but nothing other than this, what you're calling the overall policy, this one seems to speak specifically to the mastectomy.

MS. JONES:

A. There's one reference in here to that, yes.

CHAYTOR, Q.C.:

Q. Two.

MS. JONES:

A. Two, is there?

CHAYTOR, Q.C.:

Q. Well we have the one where it talks about the larger specimen, such as breasts and colon.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And then we have the actual calling the pathologist on call if it's after hours -

MS. JONES:

A. For breast, specifically.

CHAYTOR, Q.C.:

Q. For a breast specimen, yes, breast specifically. If this isn't in, hasn't been

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adopted, are you able to say why not?

MS. JONES:

A. I would think that it is in a process of many policies that are in draft development.

CHAYTOR, Q.C.:

Q. Right, but given the issue that came out here, the ER/PR issue, why wouldn't this policy be given a priority?

MS. JONES:

A. I can't answer that, you'll have to ask Dr. Howell about where this is in the line up on his policy for and given that he has, if you look to the top, he is the issuing authority because it's not just a lab. We assign individuals for certain kinds of policy and obviously this one has been assigned to Dr. Howell.

CHAYTOR, Q.C.:

Q. And who now has the responsibility for the peri-operative program?

MS. JONES:

A. Norman Baker.

CHAYTOR, Q.C.:

Q. Okay, I'd just like to move on, October 5th, 2005, which would be exhibit 0486, page 43. I

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believe this is the next executive management meeting.

MS. JONES:

A. Okay.

CHAYTOR, Q.C.:

Q. And if we look at the--sorry, go back to the beginning, here we go. And Mr. Tilley is chairing the meeting, I guess, and you're not actually at this one, you have regrets given.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Mr. Williams is at this one.

MS. JONES:

A. Okay.

CHAYTOR, Q.C.:

Q. Dr. Williams, I should say. And at page 43 at the bottom, we have "George Tilley commended Dr. Williams on his handling of the media and articulating the messages related to the ER/PR." So this is three days after the issue has come out.

MS. JONES:

A. In "The Independent", yes.

CHAYTOR, Q.C.:

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Q. "Initially the reaction of the public to the press release was minimal; however, it has since increased." And this is Ms. Bonnell's name, I take it if your name is over in the column, you're the person tasked with the -

MS. JONES:

A. With either follow up because of something that's there, right, "to ensure consistency of messages all calls will be routed to"--and that would have been, yeah.

CHAYTOR, Q.C.:

Q. Now would you be provided copies of the minutes?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So even though you're not in attendance, you get your copies of the minutes.

MS. JONES:

A. Oh yes.

CHAYTOR, Q.C.:

Q. And would you read those?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

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Q. So you would have read this to bring yourself up to date on all the issues, including the ER/PR issue?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Yes, and it says Ms. Bonnell either reporting on this issue or being tasked with any follow up.

MS. JONES:

A. Follow up.

CHAYTOR, Q.C.:

Q. "Calls are being received through various avenues throughout the organization, including switchboard emergency and cancer clinic to ensure consistency in the messages, all calls will be routed through the patient relations officer."

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. "A meeting with the other health authorities in relation to the process that we are recommending to ensure a system-wide approach to the public communications are ongoing. An

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information website will be established on the Health Care Corporation of St. John's' webpage." Why is that not Eastern Health?

MS. JONES:

A. We were early in, I would suspect that somebody did not pick that up. We wouldn't have had an Eastern Health website at that point in time, I wouldn't expect, and it still would have been Health Care Corporation and this is only five, six months, it was not a priority in moving to that, I would expect.

CHAYTOR, Q.C.:

Q. "Dr. Laing and Pat Pilgrim are working on developing a communication strategy for physicians around the province. Dr. Williams will share with executive the current details, fact and figures from laboratory on this issue." And what did that refer to?

MS. JONES:

A. I guess if Dr. Williams had any--this is the facts and figures, may very well be if we look at the Mount Sinai reference there, I would expect that we still didn't have a number and we know that we didn't have them back for months, whether in fact all of the specimens

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that had gone forward were reported on.

CHAYTOR, Q.C.:

Q. "All specimens will be forwarded to Mount Sinai by Monday, October 10, 2005, with the exception of Corner Brook."

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So Corner Brook is still not in and that looks like it's Dr. Williams.

MS. JONES:

A. Williams for follow up, yes.

CHAYTOR, Q.C.:

Q. And Pat Coish-Snow advised that there are few specimens from 1997 through 1999 from Clarenville that are being prepared and will be sent to St. John's for packaging and forwarding to Mount Sinai."

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And why is it only 1997 through 1999 from Clarenville?

MS. JONES:

A. I probably would know it today, I wouldn't

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have known it at the time, but Clarenville did not use--Clarenville had sent their specimens directly to Mount Sinai for a long period of time, they were a different board a the time, so I don't know, but maybe '97 to '99 there was some work done in St. John's for Clarenville.

CHAYTOR, Q.C.:

Q. And so after that time period, it's your understanding now that Clarenville had already been using Mount Sinai?

MS. JONES:

A. Already been using Mount Sinai.

CHAYTOR, Q.C.:

Q. And does Clarenville continue to use Mount Sinai?

MS. JONES:

A. It was using Mount Sinai, we've just recently, we were doing for St. John's, and I'm thinking that both Clarenville and Carbonear are now being worked on in St. John's, but you would have to ask Dr. Howell that.

CHAYTOR, Q.C.:

Q. You're not sure.

MS. JONES:

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A. I'm not absolutely sure on that point.

CHAYTOR, Q.C.:

Q. So Clarenville is clearly under Eastern Health's umbrella now.

MS. JONES:

A. That's right, and we would have been moving those that worked to Eastern Health.

CHAYTOR, Q.C.:

Q. And whether or not you are currently doing the ER/PR testing for Clarenville, you're saying that's Dr. Cook?

MS. JONES:

A. I'm thinking it's yes, because we've had conversations about at--with the lab in St. John's doing the work for St. John's and then moving Carbonear back in and Clarenville back in, but I'm thinking yes right now.

CHAYTOR, Q.C.:

Q. Okay. And the next meeting, executive management, October 19th, 2005.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And this one you are in attendance?

MS. JONES:

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A. Yes.

CHAYTOR, Q.C.:

Q. But Dr. Williams is not in attendance at this meeting.

MS. JONES:

A. And I chaired this meeting, according to this one.

CHAYTOR, Q.C.:

Q. You chaired this meeting.

MS. JONES:

A. Yes, because Mr. Tilley wasn't in attendance.

CHAYTOR, Q.C.:

Q. Okay, yes. So would you be the person, if Mr. Tilley was absent, would that be the norm, that you would be the person to step up to the plate?

MS. JONES:

A. Not necessarily, George would ask an individual to do it, so it could have been me today, it could have been Fay Matthews the next week if he was not there.

CHAYTOR, Q.C.:

Q. And in terms of his absence on any occasion, other than in the context of executive management meetings, who would be the next

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person, the second in charge, if you will?

MS. JONES:

A. He didn't have a second in charge.

CHAYTOR, Q.C.:

Q. So would it depend on the issue as to who would -

MS. JONES:

A. It depended on the issue and we would deal with the issue, so if it was in the adult acute care portfolio, I would take responsibility on that; if it was in community, it would be the COO or the VP responsible.

CHAYTOR, Q.C.:

Q. Okay, so on this occasion, this meeting that you chaired, the laboratory ER/PR update, who would have given the update in Dr. Williams' absence?

MS. JONES:

A. I can't answer that because in the previous minutes you had referenced that Pat Pilgrim was following up on a physician--with Dr. Laing and that, so there may have been points in this that others could have added to the conversation and certainly on the media

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campaign and I don't know if Susan Bonnell was there, but Mr. Dodge would have been there as well and they might very well have been able to--Susan wasn't there, so it would have been Steve in that instance.

CHAYTOR, Q.C.:

Q. Okay, and this is saying that "the organization is considering a media campaign to ensure key messages are communicated, public announcement for T.V. and print add, there is a growing awareness nationally related to our laboratory PR/ER testing."

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Did that happen? Was there any T.V. -

MS. JONES:

A. I can't recall back that far, right, in terms of the actual flow of the communication, right.

CHAYTOR, Q.C.:

Q. So do you know, do you know whether or not any T.V. ads were ever run on this issue?

MS. JONES:

A. I wouldn't have thought T.V. ads, but sure

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some print ads, but I'm not sure on that because we have used print in the past, we have used some radio ads as well, more recently.

CHAYTOR, Q.C.:

Q. We continue on then, I think the next meeting is October 31st.

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. Mr. Tilley is back as chair.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. You are in attendance, as is Dr. Williams.

MS. JONES:

A. Yes, and -

CHAYTOR, Q.C.:

Q. Sorry?

MS. JONES:

A. No, no, I was just checking the date there, that's fine.

CHAYTOR, Q.C.:

Q. October 31st?

MS. JONES:

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A. 31st, yes.

CHAYTOR, Q.C.:

Q. And it appears Ms. Bonnell is also present?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And the update is under 1.5, Laboratory ER/PR Update. Dr. Williams is expecting additional information on test results from Mount Sinai, as more information becomes available, executive will be advised accordingly. There were several callers to the "Open Line" today related to the issue." And that's it in terms of the update given to executive given on that date.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Now, we just looked through the minutes of October 5th, October 19th, October 31st -

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. And previously we had looked at the September 28th minutes.

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MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. This issue on fixation, that's not raised with the executive management?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And in terms of reporting on the outcome of the external reviews, was that raised at the executive management level?

MS. JONES:

A. If there's nothing here to say that, then it wouldn't have been and may have been, but I don't see it there, the external reviews are back, but they weren't, I don't believe--there was exit interviews, but at that point in time the written reports, I would expect, were not back. Dr. Williams would have referenced that.

CHAYTOR, Q.C.:

Q. And if there's no indication in the minutes of any verbal, if there had been a verbal communication by Dr. Williams on the outcome of the reviews, would we expect to see that in

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the minutes?
MS. JONES:
A. You would have expected--these are not verbatim minutes, as you can well appreciate, but the main points that were discussed would have been captured.
CHAYTOR, Q.C.:
Q. You go on to November 16th then appears to be the next.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And under ER/PR 2.9 "Laboratory ER/PR Update: the slow turn-around time for test results from Mount Sinai is an issue. Mr. Tilley has been in contact with the CEO in an attempt to speed up the response time."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And Dr. Williams is regrets, he's not in attendance at this meeting.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:

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Q. Do you recall that the reports of Drs. Banerjee and Ms. Wegrynowski being addressed at the executive management meetings in 2005?
MS. JONES:
A. Probably, no in terms of the recommendations, per se, I would understand that they--Bob would have indicated that the reports were back, okay, and that they would have been working on the recommendations.
CHAYTOR, Q.C.:
Q. So that's the extent of what would be told at the executive management level?
MS. JONES:
A. Working through the recommendations.
CHAYTOR, Q.C.:
Q. Okay, and would there have been any information provided to executive management as to what the nature of the problem -
MS. JONES:
A. Only in a generic sense, they were deemed to be peer reviews, okay, so we never did physically see the recommendations and only to the extent policy procedure work and the recommendations as they were moving forward. So Bob basically managed the file with respect

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to what needed to be done.
CHAYTOR, Q.C.:
Q. So what were you told in terms of in a general sense, what were you told that the nature of the problem--what was the nature of the problem?
MS. JONES:
A. There was never any discussion about the nature of the problem, there was lots of, you know, discussion elsewhere, not in executive, around, you know, false negativity, you know, DAKO, Ventana, but they would not have been discussions to be able to draw conclusion. There was never any conclusion to say that this is what we found, bottom line is that the recommendations that came out of the report, we're working our way through them.
CHAYTOR, Q.C.:
Q. So you would have been told that there was a change in equipment, DAKO to Ventana.
MS. JONES:
A. We knew that, though, from the September and that was one of the things that they were concerned about, was there something with the equipment.

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CHAYTOR, Q.C.:
Q. Right, okay. So was that ever linked to what came out of the external reviews?
MS. JONES:
A. There was nothing that we knew of the external reviews because we didn't physically see them.
CHAYTOR, Q.C.:
Q. Right.
MS. JONES:
A. And it wasn't discussed at executive.
CHAYTOR, Q.C.:
Q. And was this issue in terms of the equipment, DAKO verses Ventana, was that an issue that continued beyond the September -
MS. JONES:
A. Absolutely because it still is, in some ways, a discussion that was happening between pathologists and that, so you would just hear it in general discussion, not inside of here.
CHAYTOR, Q.C.:
Q. So that's an issue that got brought up over and over again.
MS. JONES:
A. Over and over again.
CHAYTOR, Q.C.:

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Q. And the issue too, I'm sorry, you said there was something else too that was said?
MS. JONES:
A. Policies, you know, that--are policies not up to date, you know, not written or up to date and, you know, you could probably go in many areas where in fact, you know, there was policy work being done or not being done, you know, where there were revisions all the time, right.
CHAYTOR, Q.C.:
Q. And those policies including the fixation policy?
MS. JONES:
A. Well I would know the fixation policy because of the September issue.
CHAYTOR, Q.C.:
Q. So that would be one of the policies?
MS. JONES:
A. Yes. And there was also lots of discussion about how many steps were in the process, you know, the 40 plus steps and how could we decrease, that was part of some of the work was going on, how could we decrease the number of steps in the process.

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CHAYTOR, Q.C.:
Q. Did anyone ever show you that or is there ever a document produced to say here is the 40 steps?
MS. JONES:
A. No, I never ever saw it, but 40 steps, everybody is to keep talking about the 40 steps and there's got to be a way to improve the process was the way it was talked about.
CHAYTOR, Q.C.:
Q. I take it the steps being from the time the specimen leaves the patient, 'til the specimen ends up fully processed through a slide and interpreted by a pathologist?
MS. JONES:
A. Interpreted, that's exactly -
CHAYTOR, Q.C.:
Q. So other than those things, was there ever any information given to the executive management as to what may have caused the problem?
MS. JONES:
A. No.
THE COMMISSIONER:
Q. So you mean at the end of the day, nobody came back and said by the way, it wasn't DAKO or it

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wasn't Ventana or it was DAKO or it was Ventana?
MS. JONES:
A. No, there was never any discussion to that, I would say that people would say that there were many contributing factors, but actual issue, there was never any conclusion as this particular issue on this particular day or whatever, and I don't know whether we can say that yet, but that's for us to work through.
CHAYTOR, Q.C.:
Q. Did anyone ask?
MS. JONES:
A. I think that what you need to understand is that the issue that was in front of us was how can we assure that we have a lab that is best practice and providing quality, so all of those things that either came out in the recommendations that Bob were working on, was to ensure that we had quality. There was lots of research being going on into the literature around, you know, the positivity rates, I also know that we had called around the country and nobody was collecting positivity rates at the time, you know, so there were things that we

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would have expected Mayo to have that when things were called forward, that others didn't have it either. So I don't believe that there was a sight on exactly what had gone on or what should have gone on.
CHAYTOR, Q.C.:
Q. So that kind of detail was given to you though, that the DAKO/Ventana issue, the issue of false negatives you said a few minutes ago -
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. - people tracking positivity rates, you were told all of that and who may not be.
MS. JONES:
A. But not necessarily inside of executive. This was, you know, if we were talking to Pat Pilgrim and the quality department were calling around just to see if, in fact--so, in terms of a report, those were the kinds of things that were--they weren't, kind of, coming in here, because nobody had had a sight on exactly what it was. They were trying to gather as much information as they could.

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CHAYTOR, Q.C.:
Q. So, whether it's through formally sitting around executive management or in your discussions with Ms. Pilgrim, you learned those things?
MS. JONES:
A. We learned those things, but not in -
CHAYTOR, Q.C.:
Q. Are you involved in the issue?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. What's your involvement in the issue?
MS. JONES:
A. In this issue -
CHAYTOR, Q.C.:
Q. At this point in time.
MS. JONES:
A. At this point in time -
CHAYTOR, Q.C.:
Q. Not today, back when we're looking here now at minutes.
MS. JONES:
A. I'm not involved because I don't have quality. I had the peri-operative program and I didn't

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have the lab program.
CHAYTOR, Q.C.:
Q. And you indicate you don't know even to this day if anyone has the answer as to what may or may not have contributed or caused the problem.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. Okay. And have you read the reports of Dr. Banerjee and Trish Wegrynowski?
MS. JONES:
A. After I took over this job I did because there was some question about releasing the information to the Inquiry.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. And so therefore, I needed to know what was inside those reports, to move them forward.
CHAYTOR, Q.C.:
Q. And did that shed any light on the issue for you as to what may have contributed or caused the problem?
MS. JONES:

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A. There were many factors that were listed in terms of basic policy and procedure, some things even as fridges, education, quality control was referenced in their internal/external control. So, there were many things inside of those reports. I think all of them, coming together, would have contributed to it.
CHAYTOR, Q.C.:
Q. And what did Dr. Banerjee say about the DAKO system?
MS. JONES:
A. Well, it was clearly, in his and--I don't know the words--but it was, it's not Ventana, it's not DAKO or the Ventana system, I guess, was what was referenced there.
CHAYTOR, Q.C.:
Q. Ventana and DAKO, both would have been mentioned?
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. When you read the reports, based on what you had been told up to that point in time, were you surprised by the content of the reports?

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MS. JONES:
A. I think what you had there was in Trish's--and I can't pronounce her last name, but -
CHAYTOR, Q.C.:
Q. We say Wegrynowski. She'll correct us when she gets here, if it's now right.
MS. JONES:
A. Okay. In the technical report, a lot of things around policy, procedure, education, at the point in time I wasn't really, you know, aware, I knew that we didn't have any licensure in the province with respect to pathologists. I already knew that we didn't have any lab accreditation, those kinds of things. And you know, those things would have things that if, in fact, those kind of formal processes had been gone on and reviewed, you know, every two years or every three years or every year, then you may very well have seen more formalization of those kinds of things. But I would not be aware of the actual lab policies or those kinds of things. So, seeing that they were either outdated, you know, or standard operating procedures, you know, those, you sort of say to yourself, well,

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shouldn't they have been there or some evidence of them in some way, should they have not been there.

CHAYTOR, Q.C.:

Q. And I take it you would not have been surprised, obviously, with the issue of fixation?

MS. JONES:

A. No, because I had already been aware of that one.

CHAYTOR, Q.C.:

Q. You were aware of that. What about those specifically, what Dr. Banerjee's findings were in terms of issues around the pathologists' work? Were you surprised by that?

MS. JONES:

A. I didn't have any reference point for pathologists. You know, you got internal/external controls, that really didn't mean anything.

CHAYTOR, Q.C.:

Q. But had any of that been brought to your attention or mentioned in the discussions beforehand?

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MS. JONES:

A. No, no.

CHAYTOR, Q.C.:

Q. The issue of licensure in the province for pathologists -

MS. JONES:

A. No, yes, pathologists?

CHAYTOR, Q.C.:

Q. You said for pathologists.

MS. JONES:

A. No, technicians.

CHAYTOR, Q.C.:

Q. I take it you mean technologists.

MS. JONES:

A. Technicians, yeah.

CHAYTOR, Q.C.:

Q. Okay, maybe I heard you wrong.

MS. JONES:

A. I might very well have said it the other way, Sandy, looking at Bernie, I probably did.

CHAYTOR, Q.C.:

Q. I knew there was an issue for technologists, but pathologists raised a little eye brow here. Okay. And after having read the reports, did you speak to anyone about the

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content?

MS. JONES:

A. Only to the extent of talking to Dr. Howell and saying, where are we? We had heard that the majority of the recommendations were in place or were in the process of being in place, so, where are we? What's left to be done? Okay. Because at that point in time, we had already restarted, okay, work for St. John's. So, there obviously had been a decision made to restart that particular component of the lab. Remember, the rest of the lab was functioning, it was just for that component. So, what is left outstanding and what do we absolutely need to do? So, that was the discussion that I had with Dr. Howell. The other thing was, is that we were going into an accreditation in the fall through the Canadian Council of Health Services Accreditation and the lab was going to be part of the pilot project on that. So, we would have another external body coming in other than the peer reviews that we had to look at the lab. Okay. And so we got those and the very next--once we got those reports, it was

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okay, you know, because there were a number of recommendations in there that still looked the same, you know, around policy and procedure and documentations.

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. So, where are we with this? Are these the same ones? Because the new accreditation report was for all the lab, not necessarily just this little specific part of the lab. And then where went with the QMPLS as well on that.

CHAYTOR, Q.C.:

Q. Yes, in December then.

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. Yes, and I'm going to take you through the accreditation process in a little while.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. In terms of dealing with the two external reviews, you say that and obviously you took

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it on yourself once you became interim CEO to see where you were in process.

MS. JONES:

A. Yes. And also we were early in that process around, possibly request or knowing that they would have had to be coming forward in the Inquiry or there would have been a request for them. So, not having any knowledge about what they were, it was that whole issue of peer review and protection and those kinds of things. So, not knowing what was inside of them, I needed to, at least, as in my role as CEO, and they didn't go any place else, understand that.

CHAYTOR, Q.C.:

Q. So, is that what spurred you to look at the reports, the fact that a request came--now, that would have been some time later because July of '07 you take your position.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And it's some months later that the Inquiry is looking for those documents.

MS. JONES:

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A. But there was--if you go through--because I have been through the minutes on the executive--if you go through the latter part of July, there was discussion by the group that we had had already convened to say that the peer review documents will most likely come forward.

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. And that therefore, we have to deal with that in the terms of the Inquiry and elsewhere.

CHAYTOR, Q.C.:

Q. Okay, so what was that precipitated you to look at the documents?

MS. JONES:

A. Initially it was. Given everything else that was going on that I was into in the month of July, it would have been some time between July and September that I would have looked at those. And I can't tell you, because there was so many files on the desk at the time.

CHAYTOR, Q.C.:

Q. And so then you followed up with Oscar Howell and -

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MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - inquiries as to where he was -

MS. JONES:

A. Where we were with it.

CHAYTOR, Q.C.:

Q. - with the implementation of the recommendations.

MS. JONES:

A. Absolutely.

CHAYTOR, Q.C.:

Q. So, that would have been some time later in July or August 2007?

MS. JONES:

A. Yeah, August into September by the time I got to that aspect, right.

CHAYTOR, Q.C.:

Q. And all the recommendations were not implemented at that point in time?

MS. JONES:

A. No, there still is one recommendation that is not, okay.

CHAYTOR, Q.C.:

Q. And what was the status in August/September

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2007 when you spoke to Dr. Howell? Was there more than one recommendation -

MS. JONES:

A. There may very well have been and they were working with those and it would have been still in the policy area, not the other technical kinds of things, as well as the piece of equipment that, the (unintelligible), whatever it is, that we haven't implemented.

CHAYTOR, Q.C.:

Q. Were you advised that Mr. Tilley had, prior to leaving his job, agreed to give the reports to Mr. Abbott?

MS. JONES:

A. No, I wasn't.

CHAYTOR, Q.C.:

Q. When did you learn that?

MS. JONES:

A. When I arrived in the office, okay, there was a letter to John Abbott as well as the peer review file sitting on the desk.

CHAYTOR, Q.C.:

Q. Sitting on the top of your desk.

MS. JONES:

A. Sitting on the top of Mr. Tilley's desk.

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CHAYTOR, Q.C.:
Q. So, you actually moved in, physically into Mr. Tilley's office?
MS. JONES:
A. I moved physically into Mr. Tilley's office and when I--and I'm believing that it wasn't in an envelope. So, there would have been a letter to John Abbott and attached were the peer review documents. At this point in time, John Abbott is gone and I am--Robert Thompson is there. And so with no John Abbott, this to me, doesn't go anywhere and Mr. Thompson didn't ask for those particular reports.
CHAYTOR, Q.C.:
Q. Okay. I just want to back up a bit.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. There's a letter sitting on your new desk.
MS. JONES:
A. On the desk, yes.
CHAYTOR, Q.C.:
Q. Signed by Mr. Tilley? Is it signed?
MS. JONES:
A. I put it back into a file. So, I just said to

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the secretary, just take that -
CHAYTOR, Q.C.:
Q. Okay, now, all right -
MS. JONES:
A. - and I'm thinking it is signed by George.
CHAYTOR, Q.C.:
Q. Signed by George, so what's the date on the letter?
MS. JONES:
A. I have no idea, but it certainly would have been before the--well, it would have been before John Abbott left the Department of Health. And this was a cover letter, I take it, to forward the reports onto Mr. Abbott?
MS. JONES:
A. Absolutely.
CHAYTOR, Q.C.:
Q. Ms. Jones, where is that letter?
MS. JONES:
A. I'm sure that if I go back to the secretary--I just said to Joyce, put that back in the file.
CHAYTOR, Q.C.:
Q. So, you could get that for us lunchtime?
MS. JONES:
A. I would say that, yeah.

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CHAYTOR, Q.C.:
Q. We've never seen that letter.
MS. JONES:
A. I have seen the letter.
CHAYTOR, Q.C.:
Q. We've never, no, we've never.
MS. JONES:
A. So, there would have been a letter and like I said, no John Abbott, no Robert Thompson.
CHAYTOR, Q.C.:
Q. And is there any reason why that letter wouldn't have been provided to the Commission.
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. You don't know if your lawyer has seen it either?
MS. JONES:
A. No, because I wouldn't have even thought of that. It was just a letter there -
CHAYTOR, Q.C.:
Q. Okay. And Mr. Simmons apparently is indicating that he hasn't seen it either.
MS. JONES:
A. Yeah.

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MR. SIMMONS:
Q. No, I might add at this point, no, I haven't seen the letter either. And I know in the interview process we've had some discussions around this piece and I don't think it's occurred to anyone to go back and look to see if there had been -
CHAYTOR, Q.C.:
Q. No, I don't think--this didn't come up in anyone's interview. I think we learned this for the first time in Mr. Tilley's evidence because this is the first time I'm hearing this.
MR. SIMMONS:
Q. Well -
MS. JONES:
A. That's right and that wasn't asked of me -
CHAYTOR, Q.C.:
Q. No, that's right.
MR. SIMMONS:
Q. But there's no problem, we'll go back lunch time and see if we can find it and there'll be no difficulty producing that.
CHAYTOR, Q.C.:
Q. Thank you. So, there was the letter and the

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reports and you took them and gave them to your assistant.

MS. JONES:

A. Yes, I just said to Joyce, there is no John Abbott, why didn't it go? It's probably dated pretty, probably at the same time as John left the department.

CHAYTOR, Q.C.:

Q. Okay. So, at the point that you're finding this, Mr. Abbott also is no longer in his position.

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. Did you contact Mr. Thompson and ask him if he--that you had found this and is he interested in having the information?

MS. JONES:

A. No, I didn't because I knew that we--from my perspective, they were peer review. What decision Mr. Tilley had made around peer review and sharing with the department, I can't speak to that.

CHAYTOR, Q.C.:

Q. And did you consult with anyone else in making

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that decision?

MS. JONES:

A. Nope, that was, I'm faced with a letter to an individual who's no longer existing inside of the department and peer review that, I believe, is privileged information.

CHAYTOR, Q.C.:

Q. And you hadn't seen the reports that point?

MS. JONES:

A. And I hadn't seen the reports at that time and I didn't read them at the time.

CHAYTOR, Q.C.:

Q. And you're relying on whose characterization of them as peer review at that point in time?

MS. JONES:

A. They had been always talked about since the September of 2005 as external peer reviews.

CHAYTOR, Q.C.:

Q. Other than this letter to Mr. Abbott and the reports was there anything else on your desk?

MS. JONES:

A. Lots of stuff on the desk, but -

CHAYTOR, Q.C.:

Q. Okay, so it's not that this is the only thing sitting there.

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MS. JONES:

A. No, it's not that this is the only thing that's sitting there.

CHAYTOR, Q.C.:

Q. But this was sitting on the top of the desk?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Is there anything else relevant to the ER/PR issue on the top of the desk?

MS. JONES:

A. No, only the issue that we have to deal with the ATTIP request from Mark Quinn with respect to the GI (phonetic) identified information that had to be dealt with in that week, as well as--no. And the rest of it would have been the Burin radiology and anything else that would have been on the CEO desk at the time.

CHAYTOR, Q.C.:

Q. Okay. I'm going to go back now to your role as COO.

MS. JONES:

A. Yes, fine.

CHAYTOR, Q.C.:

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Q. Try and keep it chronological here. Were you ever consulted or did you provide any advice in your role as COO with respect to your responsibilities for the pastoral care and ethics with respect to the ER/PR issue.

MS. JONES:

A. No, the only issue there was Bob calling and saying I need a consult.

CHAYTOR, Q.C.:

Q. And that's Bob Williams.

MS. JONES:

A. That's Bob Williams.

CHAYTOR, Q.C.:

Q. And what was that about, when did he call you?

MS. JONES:

A. Well, some time in June of--made a phone call or an e-mail, phone call, I'm sure it probably was saying, Louise, we need an ethics review on this can you get Rick to set that up.

CHAYTOR, Q.C.:

Q. And what was the "this"?

MS. JONES:

A. It was that we had results of clients who had died and at the end of the day, what do we do with those, from a disclosure perspective.

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CHAYTOR, Q.C.:
Q. Now, you indicated this morning that the norm would be contact your assistant, but if there's some urgency then, it could be done otherwise. Was there an urgency in this? Why is Dr. Williams contacting your directly?
MS. JONES:
A. You need to understand Dr. Williams. Dr. Williams picked up the phone many times, he didn't write things. So, he would call, he'd probably had never asked for an ethics consult before. Being that he knew that pastoral care and ethics was my area of responsibility, he would call and say, this is what I've got, can you get that in process? That was the extent of the phone call, or the phone call and then Denise, mostly likely, would have probably followed up, but I can't recall that piece.
CHAYTOR, Q.C.:
Q. And did you understand from him that there was any urgency to the request?
MS. JONES:
A. He needed to--he wanted to get it because we did have, we did have results and the question was what do we do with the results? So we

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were at the point in time where I expect we had dealt--we had pretty much dealt with the notifying patients and treatment changes and those kinds of things, so this was a piece of work where we had results that needed to be dealt with.
CHAYTOR, Q.C.:
Q. And did you understand these were results for all deceased patients?
MS. JONES:
A. No, they were not all deceased patients, I knew that.
CHAYTOR, Q.C.:
Q. So he told you that.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And did he indicate whether or not there was any intention to retest all the deceased patients?
MS. JONES:
A. Wouldn't have had that discussion.
CHAYTOR, Q.C.:
Q. So this was him contacting you to arrange an ethical consult for the deceased patients who

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you did have results for.
MS. JONES:
A. Who we did have results on.
CHAYTOR, Q.C.:
Q. And how did you understand--why is it that there were results for deceased patients? How did that come to be?
MS. JONES:
A. I think that came about because in the initial pulling together of blocks to be sent to Mount Sinai, we just pulled blocks and sent them and at that point in time, there was not a differentiation about or check to see if in fact these clients were actually--had died, so in the process of pulling and trying to get as much to Mount Sinai as we could, there were a portion of slides that went for that period of time that were negative, that we didn't know that the clients were already deceased.
CHAYTOR, Q.C.:
Q. And Dr. Williams, did you ask your assistant then to arrange it or did you refer him on to the director of pastoral care?
MS. JONES:
A. No, I would call Rick myself and say "Rick, go

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talk to Bob, this is what Bob needs and he'd like for you to get it done sooner, rather than later."
CHAYTOR, Q.C.:
Q. And was the issue as to whether the information on the deceased should be disclosed and if so, to whom, is that basically what the issue was?
MS. JONES:
A. Rick would have talked to Dr. Williams on that himself and I would think that that was part of the discussion. We already had, you know, we had a policy on disclosure for the living, but we hadn't had, like next to kin, who is it, how do you do it, all of those kind of things?
CHAYTOR, Q.C.:
Q. So were you ever contacted to give any advice as to the--or to set up an ethical consult regarding the disclosure piece to the living patients?
MS. JONES:
A. No, because we had policy direction already in there.
CHAYTOR, Q.C.:

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Q. And so your policy that was in place, was deemed to be appropriate to deal with this situation?
MS. JONES:
A. Yes, for that, but we didn't have any direction around this particular -
CHAYTOR, Q.C.:
Q. The deceased, right.
MS. JONES:
A. The deceased.
CHAYTOR, Q.C.:
Q. But it was felt that the disclosure policy in place for the living was the policy to be followed with respect--the disclosure policy was adequate and to be followed for the living.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And so no other ethical issues came up or were brought to your attention concerning the disclosure piece to the patients.
MS. JONES:
A. No.
CHAYTOR, Q.C.:

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Q. How about to the public? Anybody approach you as to looking for an ethical consult as to whether or not this issue should be made public?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. If we could have 0481, I believe it is, Ms. Jones, the cover is just "Ethics Review".
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And then page two, it's "Pastoral care and ethics, Department of Eastern Health, May twenty-ninth, two thousand and"--it's handwritten in "sixth"?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. "Dr. Robert Williams from Rick Singleton and it's Re: Ethics Consult, ER/PR".
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So I take it you've seen this document?

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MS. JONES:
A. I have.
CHAYTOR, Q.C.:
Q. So what ultimately happens, were you involved--you contacted Rick Singleton.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And were you at all involved then in arranging the ethical consult?
MS. JONES:
A. No, no involvement at all.
CHAYTOR, Q.C.:
Q. Okay. And who would--how is the group comprised? We see a number of individuals listed there, who makes the decision as to who will sit in?
MS. JONES:
A. Likely Dr. Singleton would have talked to Dr. Williams about who is involved in this issue and then Rick would have put a group of individuals around the table to talk about the issue based upon what was asked.
CHAYTOR, Q.C.:
Q. And so the people would be the people involved

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in the issue with -
MS. JONES:
A. And the issue who knew the most about the issue that they were dealing with. So you see that you have Heather Predham in risk management, you have oncologists there, you have pathologists, Dr. Natalie Bandrauk, so her name is spelled wrong there.
CHAYTOR, Q.C.:
Q. What's the name?
MS. JONES:
A. Bandrauk, she's an intensivist and an ethicist who works out of Memorial and then Rick Singleton being the facilitator. Dan Boone would have been there because we often have lawyers inside of our ethics consult, depending on who is involved with the situation and what interaction we had had with them over a period of time. So it wouldn't have been unusual for me to see a lawyer present in this particular consult.
CHAYTOR, Q.C.:
Q. And in what capacity would Dan Boone be involved in this issue?
MS. JONES:

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A. Probably as, I think you go on talking about next of kin and -
CHAYTOR, Q.C.:
Q. But why would he have been involved in -
MS. JONES:
A. Because there would have been questions around who legally--who do you talk to now that the client is -
CHAYTOR, Q.C.:
Q. But why Dan Boone as opposed to, say, Eastern Health's corporate lawyers?
MS. JONES:
A. In 2006, I don't think we had corporate lawyers.
CHAYTOR, Q.C.:
Q. You didn't have any lawyers?
MS. JONES:
A. Well Donna Strong came on at some point in time.
CHAYTOR, Q.C.:
Q. She'd be in-house.
MS. JONES:
A. She'd be in-house. We took--we had a number of--we had gone out for a RFP in the old Health Care Corporation period of time where

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Stewart McKelvey, as well as Benson Myles, were two law firms that we in fact used, based upon different cases and then when we came in with Eastern Health, whoever the legacy board was dealing with at a particular time would be the lawyers, so we didn't really start to build any in-house counsel until the last year or so, so Dan Boone was with Stewart McKelvey and he would have been brought into many issues other than insurance issues.
CHAYTOR, Q.C.:
Q. I just want to be clear then, so Stewart McKelvey was your corporate lawyers, as well as the lawyer for HIROC, your insurer?
MS. JONES:
A. With the RFP there were two firms that actually, you can't call them preferred bidders, but there was two and based upon the skill sets that we need, we use people in Stewart McKelvey for labour law, a lot of our labour law works goes to Gus Lilly who had been working with legacy organizations for a long, long time.
CHAYTOR, Q.C.:
Q. And Gus Lilly is Benson Myles? Sorry, Stewart

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McKelvey.
MS. JONES:
A. Stewart McKelvey, and so -
CHAYTOR, Q.C.:
Q. I think Gus Bruce -
MS. JONES:
A. Gus Bruce, and Gus Bruce would be somebody in Benson Myles, but we had also used Jeff Benson because he had a lot of work with the legacy boards around consent and bi-laws and that, so really we had a set of lawyers that we used based upon the skills that we needed at the time and Dan would be involved with us, not necessarily from a HIROC perspective, but on lots of cases that were not HIROC as well.
CHAYTOR, Q.C.:
Q. But in this particular issue, he is the lawyer -
MS. JONES:
A. The one with the most knowledge.
CHAYTOR, Q.C.:
Q. Well he's the lawyer who has been appointed by HIROC to present the class action.
MS. JONES:
A. Yes, yes, absolutely.

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CHAYTOR, Q.C.:
Q. And so he would have the most knowledge of the issue on that basis, I take it.
MS. JONES:
A. On that basis, right.
CHAYTOR, Q.C.:
Q. Is there any policy that outlines who should attend an ethical consult? Is there anything in writing that says that you should have people involved in the issue or you should have people from the community? Is there anything that -
MS. JONES:
A. There is a whole set of processes around an ethics consult and facilitation and identifying the ethical issue and how you document and all those kinds of things. So it would be very generic in that and it does say that, you know, you put the individuals around who have the most knowledge about and it can include clients or families and that, but it really is an open--it's not prescriptive in who should be there.
CHAYTOR, Q.C.:
Q. And was, to your knowledge was there any

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consideration given to having any representative from the families?

MS. JONES:

A. I have no idea, Rick Singleton would be the one who would probably be best placed to answer those questions.

CHAYTOR, Q.C.:

Q. So you weren't consulted on the composition of the group.

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And you wouldn't expect to be.

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. You wouldn't have to give approval to any -

MS. JONES:

A. Oh no, no. And my comment earlier on that sometimes Rick would say to me, I have a consult in mental health and it's in this kind of area, who would you, not say suggest, but you know, you'll need a social worker there or you'll need whatever, it's never been a person specific thing, it's more like what kind of

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individuals and if that particularly was in an area that he didn't have a lot of work on, right.

CHAYTOR, Q.C.:

Q. And Heather Predham from risk management versus Dan Boone, lawyer, then it's Heather Predham, risk manager.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Why would Heather be part of this ethics consult?

MS. JONES:

A. Because she was managing, for all intents and purposes, the notification.

CHAYTOR, Q.C.:

Q. Managing the notification -

MS. JONES:

A. Of the--after we had panelled the individuals who had changed, so in her area, she was the one who, from the notification of patients and the letters going out and the panel letters and those kinds of things, she was keeping the database on that.

CHAYTOR, Q.C.:

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Q. Okay. So why would she be part of the ethics consult? She's the person who's tasked, at the end of the day, to making sure there's follow up with contact.

MS. JONES:

A. Yeah, and -

CHAYTOR, Q.C.:

Q. So why would she have to be -

MS. JONES:

A. She was probably also taking phone calls from families, looking for results.

CHAYTOR, Q.C.:

Q. Okay, so that's your understanding?

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. So that's why she would be there?

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. And Dr. Joy McCarthy is an oncologist?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And then we have two pathologists, Dr. Cook

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and Dr. Denic.

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. So why would they be there?

MS. JONES:

A. Cook because he was the previous clinical chief. Nash Denic is, maybe by this time, the current clinical chief, and that would be the only reason.

CHAYTOR, Q.C.:

Q. Okay.

MS. JONES:

A. As pathology.

CHAYTOR, Q.C.:

Q. Okay, and so why would you have pathologists sit on the ethics consult as to whether, and if so how to tell deceased patients the results?

MS. JONES:

A. I have no idea. That may be something that Rick will be able to answer, that question.

CHAYTOR, Q.C.:

Q. Okay.

MS. JONES:

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A. But to me, that is not an unusual group, given the issue that we were talking about, right.

CHAYTOR, Q.C.:

Q. Dr. Joy McCarthy obviously would have patient contact. The pathologists wouldn't be having that patient contact?

MS. JONES:

A. No, not in that instance.

CHAYTOR, Q.C.:

Q. Okay, but not unusual though because they are the people who -

MS. JONES:

A. Who are involved in the issue.

CHAYTOR, Q.C.:

Q. Well, how are they involved in the issue?

MS. JONES:

A. Because the whole ER/PR issue itself, they would have been involved around the--just they're the directors for the laboratory at that point in time, right.

CHAYTOR, Q.C.:

Q. So they're the--yes, and -

MS. JONES:

A. And they're probably the ones that are also talking to Dr. Williams about this.

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CHAYTOR, Q.C.:

Q. But they wouldn't be having discussions with Dr. Williams about contacting the families of the deceased.

MS. JONES:

A. No, but there would have been that whole issue of retesting as well.

THE COMMISSIONER:

Q. Sorry, are you saying that the ethical consult was not limited to the question of contacting the families?

MS. JONES:

A. No, I said that they would have had an interest in that particular issue of testing, okay, and that there was--at this point in time, there was no discussion about retesting everybody.

CHAYTOR, Q.C.:

Q. Okay, and these are--Dr. Cook and Dr. Denic both would have been pathologists practising in the lab in the time period that was under review?

MS. JONES:

A. That's right, yes.

CHAYTOR, Q.C.:

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Q. So in terms of their involvement in the issue, and of course, Dr. Cook certainly was instrumental in making sure that the review took place, but in terms of the necessity of them being at an ethical consult to determine whether, and if so how you're going to reveal the results of the deceased patients, are you able to tell us why their involvement would be necessary?

MS. JONES:

A. No, and that's why I said you really need to defer to the facilitator.

CHAYTOR, Q.C.:

Q. And the best you can think is that they were involved as the -

MS. JONES:

A. People who were -

CHAYTOR, Q.C.:

Q. - lab directors?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and we don't see anyone though, if there's an issue in terms of who's involved in the actual work, we don't see--Terry Gulliver

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is not there, the program director. There's no representative from the technologists. Would you have expected to see representation from that side of the lab work?

MS. JONES:

A. Not necessarily.

CHAYTOR, Q.C.:

Q. Why not?

MS. JONES:

A. It depends on what the issue was that was being discussed.

CHAYTOR, Q.C.:

Q. Yes, okay, so how would Dr. Cook and Dr. Denic be more relevant to that issue?

MS. JONES:

A. Because they were managing it, not necessarily the technologists, right, and so -

CHAYTOR, Q.C.:

Q. What about Terry Gulliver? He was certainly a manager of this issue as well.

MS. JONES:

A. But Terry managed the list more so, in creating the list of the 939, and then really was in the background. After that, it was Dr. Williams as well as Heather and that on the

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notification and that. So once the list was generated, then it went--a lot of Terry's work was complete.

CHAYTOR, Q.C.:

Q. And I take it though that also, in terms of Dr. Cook and Dr. Denic's involvement at this stage, in terms of letting the deceased know, deceased families know, I would take it most of their work had been concluded and they certainly weren't involved in notification piece in any event.

MS. JONES:

A. No.

THE COMMISSIONER:

Q. So, sorry to keep coming back to this.

MS. JONES:

A. No, no.

THE COMMISSIONER:

Q. But it's not getting through to me, I think. At this stage, you said that there was no thought of testing everybody.

MS. JONES:

A. That's right.

THE COMMISSIONER:

Q. Now so was the consult in terms of what do we

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do with the results for the deceased that we got, even though we might have not thought about whether we're getting deceased or not, or was it something else?

MS. JONES:

A. It clearly talks about we have results and what do we do with them.

THE COMMISSIONER:

Q. Yes, we understood, because we've had this earlier discussion this morning that you had a number of people. You just pulled blocks to get -

MS. JONES:

A. We just pulled blocks.

THE COMMISSIONER:

Q. - them to Mount Sinai, and then when they came back or at some point, in any event, after they had been sent, you realized that among those were the blocks of people who had since died.

MS. JONES:

A. Yes, and some died in between time.

THE COMMISSIONER:

Q. So then you had a block--a number of results for people who were deceased.

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MS. JONES:

A. Yes.

THE COMMISSIONER:

Q. You also had a number of people who were deceased whose blocks had not been sent.

MS. JONES:

A. Had not been sent.

THE COMMISSIONER:

Q. And my understanding is that at this stage in the process, you were not intending to send those blocks?

MS. JONES:

A. We were not intending to send those blocks.

THE COMMISSIONER:

Q. So the question for the ethics group was what do we do with those results we have back that we know and also know that the persons whose blocks were retested are now deceased?

MS. JONES:

A. Yes.

THE COMMISSIONER:

Q. And that was limited to that extent?

MS. JONES:

A. That's right.

THE COMMISSIONER:

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Q. It wasn't like, "and do we have a duty to go on and test others?" They didn't deal with that?

MS. JONES:

A. They didn't deal with that.

THE COMMISSIONER:

Q. All right.

CHAYTOR, Q.C.:

Q. Okay. Thank you, Commissioner.

THE COMMISSIONER:

Q. Ms. Chaytor, wherever you can find an appropriate place. Follow your line of questioning, if you want to do so, but -

CHAYTOR, Q.C.:

Q. Well, it's going to be a little longer on this line of questioning.

THE COMMISSIONER:

Q. Okay. So do you want to break now?

CHAYTOR, Q.C.:

Q. We can break now or have a later lunch.

THE COMMISSIONER:

Q. Well, why don't we break now and return at, say, 2:05?

CHAYTOR, Q.C.:

Q. Okay, thank you.

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THE COMMISSIONER:
Q. Thank you.
(LUNCH BREAK)
THE COMMISSIONER:
Q. Please be seated. Ms. Chaytor.
CHAYTOR, Q.C.:
Q. Thank you, Commissioner. Ms. Jones, when we broke for lunch, we were still looking the pastoral care and ethics review.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. You had indicated that the policy or practice is that to have people who are involved in an issue involved in ethics, ethics questions which may arise regarding that issue.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And so for example, if there were nursing issues or issues involving the quality of care given by nurses, would you expect that the nurses would be involved in an ethical consult?
MS. JONES:

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A. It depends on what it is. You're talking about quality of care issues. Ethics consult comes from different avenues. So if that had been a family requesting a consult, then we probably would have had nurses there, or at least probably the manager for nurses, or professional practice. It depends on the nature of the issue.
CHAYTOR, Q.C.:
Q. Okay, and in this situation though, there were no laboratory technologists invited to participate.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay, and is there any reason why they would not be represented or take part in this?
MS. JONES:
A. I can't speak to it. You really need to ask Dr. Singleton about how he put that group together to be around the table.
CHAYTOR, Q.C.:
Q. Is there thought given to having people external to Eastern Health attend, other than--I realize there's an ethicist and a

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facilitator who would have distinct roles to play, but other people external to the organization take part?
MS. JONES:
A. There is nothing that says that that can't happen, but as I said this morning, in terms of setting up a consult and a process, it doesn't preclude individuals like that from being at the table.
CHAYTOR, Q.C.:
Q. And has there ever been any concern expressed or thought given to the potential for actual or perceived conflict of interest in using those who are closest to the issue?
MS. JONES:
A. Never have--we've not had that discussion. I'm sure as we set up the process, we really wanted to put the people around the table who knew the most about the issue and make sure that in the ethics realm that the ethics question was clear, and that's the reason why we involve an ethicist right from the beginning, because lots of times there are issues that really aren't ethical issues, and we tease those out. So we actually deal with

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the ethics issue at hand.
CHAYTOR, Q.C.:
Q. And this issue, in terms of disclosure to--or whether or not to disclose to the deceased's families, that would be an ethical issue?
MS. JONES:
A. Yes, it would.
CHAYTOR, Q.C.:
Q. That would clearly be an ethical issue?
MS. JONES:
A. Yes, it would.
CHAYTOR, Q.C.:
Q. Yes. So this issue of perceived or an actual conflict of interest in using the people closest to the issue, that has not been something that's been discussed?
MS. JONES:
A. No, and we would want to have the best information or the most accurate information around the table and then use a facilitator and the ethicist to work through those issues.
CHAYTOR, Q.C.:
Q. And what is it--in this particular fact situation, what is it in terms of the people who would have the knowledge, and in this case

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we have pathologists and oncologists and Ms. Predham and Mr. Boone, who are the people from within your organization, what is it in terms of their knowledge of the issue that would be necessary to address the ethical question?

MS. JONES:

A. Well, I think that that's where Natalie Bandrauk and Rick Singleton would come in place, in identifying the issue and then we needed, at least in this instance, from my perspective, at least from a legal perspective, what is, who is the next of kin, what is the obligation, where do we go from there. So that would have been that particular role.

CHAYTOR, Q.C.:

Q. So there's a legal question in play here as well, you're saying?

MS. JONES:

A. Yeah, there would be.

CHAYTOR, Q.C.:

Q. But in terms of the people, I'm just trying to think in terms of getting the factual background from the people closest to the issue. That could be provided obviously, a

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factual background could be provided to the panel who are to consider the ethical question. Why would it be necessary for them to actually then take part in the ethical consult to determine whether there should be disclosure of the issue?

MS. JONES:

A. I think that you would have to sit at many of these and I have not, but basically from the people who facilitate and the people who have been party to these discussions over the years, this is not the first time we've done something like this. We've had this kind of facilitated process versus an individual ethicist providing advice for in excess of seven or ten years or so, and this process works for us inside of the organization in the way we do things.

THE COMMISSIONER:

Q. Could you--I guess I misunderstood the role of the facilitator this morning.

MS. JONES:

A. Yes.

THE COMMISSIONER:

Q. Because when you were speaking earlier, I

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thought the role of the facilitator was to assist in this process of determining whether or not you had an ethical question.

MS. JONES:

A. It is that, as well as to facilitate the ethics consult itself. So the facilitator will do some of the background work, will tease out the ethics question with, in this instance, Dr. Natalie Bandrauk, and then bring the group together and then the ethicist and the facilitator make sure that they stay to the issues of the ethics and not get sidetracked, and you have the richness of the discussion that happens but they always bring it back to the ethical issue, because at the end of the day, there's lots of other issues that could be discussed in vehicles like this, but this is an ethics issue at this point.

CHAYTOR, Q.C.:

Q. So you have the people who have some knowledge of the background giving rise to the ethical question?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

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Q. You have the ethicist and the facilitator?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And if there could potentially be legal issues involved, you usually invite a lawyer?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And in terms of family representation, I asked you about that this morning, to your knowledge, there was no consideration given to that in this particular case?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. Is there any group not represented in the number who attended that you would have anticipated would have been around the table?

MS. JONES:

A. Really I don't see that, at this point, even retrospective looking at it. I do know from e-mails that Dr. Kara Laing was also part of the original group that was asked, but I think that that was more in relation to having an

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oncologist there. I also know that we have three ethicists that we use, Natalie Bandrauk, Fern Brunger and Daryl Pullman, and so the attempt would have been to have an ethicist, whichever was available at the time when the rest were available.

CHAYTOR, Q.C.:

Q. Not so much an individual, but is there any other group, and I've asked you already about any representative of families or patient perspective, it doesn't have to be the actual families involved, but a patient perspective, and no thought was given to that, as far as you know. So what about is there any other group there that you would have thought would have been represented, who are not amongst those in attendance?

MS. JONES:

A. Not at this level. You might be wondering whether administration, but we really don't get involved in or sit in on the consults. We take what comes from the consults.

CHAYTOR, Q.C.:

Q. And I think it came up in my earlier meeting with you, and it was you had given some

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thought with-- mentioned the communications personnel.

MS. JONES:

A. Right.

CHAYTOR, Q.C.:

Q. Would you have expected someone from your communications personnel to be in attendance?

MS. JONES:

A. Yeah, now that you mention that, I did mention that earlier and it could very well be there as well.

CHAYTOR, Q.C.:

Q. Do the communications people normally attend or is it only when there's an issue around communication?

MS. JONES:

A. Wouldn't normally attend.

CHAYTOR, Q.C.:

Q. Okay, but if it's an issue around communications?

MS. JONES:

A. Most of these issues would end up being patient specific issues, so communication, you know, most of the ethical issues that we would look at would be in that realm. It's only on

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the administrative side where we might be looking at gambling or those kinds of things, or food choices, where we might have a perspective of how do you get information out at the end of the day, but communications would be brought in after the fact.

CHAYTOR, Q.C.:

Q. And if part of the deliberation would be whether or not to disclose to the broader community, would communications people usually be involved?

MS. JONES:

A. I don't know of any other ethics consult that we would have had that would have maybe had that element to it. So it would not have been in the natural thought process.

CHAYTOR, Q.C.:

Q. And so that's something that occurred to you after the fact?

MS. JONES:

A. After the fact, not as I read it.

CHAYTOR, Q.C.:

Q. And when we look at the people who were involved, other than of course Dr. Natalie Bandrauk, is it, Bandrauk?

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MS. JONES:

A. Yes, Bandrauk.

CHAYTOR, Q.C.:

Q. And Rick Singleton, other than those two people, would any of the other people involved in this consult, to your knowledge have had any training in ethical issues?

MS. JONES:

A. Possibly not, but I would--do believe that Heather Predham would have been involved in other consults. Other than that, other than in their basic training.

CHAYTOR, Q.C.:

Q. So does Heather Predham, the risk management or somebody from risk management sit in on all ethical consults?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. But she would have been involved prior?

MS. JONES:

A. Prior, on this particular issue.

CHAYTOR, Q.C.:

Q. Okay, and I understand that currently there is an ethics facilitator's course?

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MS. JONES:
A. Yes, there is.
CHAYTOR, Q.C.:
Q. Is that offered through Eastern Health?
MS. JONES:
A. It's offered through Eastern Health, and we've also offered that to the other regional health authorities as well, when we have done the last course that we did.
CHAYTOR, Q.C.:
Q. Okay, and people attending that course, do they achieve a certification of some sort?
MS. JONES:
A. They--it's an in-house program, okay, but once they complete it, yes, we use them for facilitators inside of our organization.
CHAYTOR, Q.C.:
Q. Okay, and what does that mean then? Like how long is this course and what exactly does it equip a person to do at the end of the day?
MS. JONES:
A. I think you best ask Mr. Singleton, Dr. Singleton. It's been a while since I've looked at that course, but when we first developed it, it had facilitation skills. It

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had ethics, ethics background, and that and we offered it over a couple of days. In the last two years or so, we've offered an ethics course which happened over a period of time, throughout the entire province, and we did issue a certificate on that, and that would have been more than a two-day course. So most of the individuals who would have been working as facilitators would have had an interest in ethics. If they'd been a facilitator with us for a long period of time, would have had our original course that ran well over two days, and probably also have the ethics certificate course that we ran about two years ago, and we ran it for the entire province.
CHAYTOR, Q.C.:
Q. Okay, so this is still within your responsibility, your realm of responsibility?
MS. JONES:
A. Yes, it is.
CHAYTOR, Q.C.:
Q. The ethics?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:

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Q. And so this is--is this something new in the past couple of years, that you've been doing the course?
MS. JONES:
A. The course, we've offered it once.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:
A. So it is--because there was so much interest in the province, as well as inside of Eastern Health, old Health Care Corporation of St. John's, we moved forward with a course. We had been doing workshops or seminars, if you want to call it, three times a year on ethics issues. Using the workshops, we probably have a hundred plus individuals from inside of old Health Care Corporation that would come three times a year. We would work through some policy issues at those and we would be bringing forward current issues. So that is how we had operated ethics inside of the organization for a long time. So it would be policy work up. We would have papers that we would have reaction to inside of the ethics days and then current topics as we move

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forward.
CHAYTOR, Q.C.:
Q. Okay, and so the actual course itself, would though that enable the person to be a facilitator?
MS. JONES:
A. Would enable, yes, they would have to do the facilitator course.
CHAYTOR, Q.C.:
Q. Okay, and was that only offered to people who work for Eastern Health or was it the broader community?
MS. JONES:
A. The last time when we offered the full course, we followed up the full course with our own ethics facilitation and anybody who was in the course from across the province who wanted to continue on to do the skills for a facilitator, it was available to them.
CHAYTOR, Q.C.:
Q. When the organization went through an accreditation, just this past year, and when had it last been accredited? Was it 2004?
MS. JONES:
A. Different organizations would have been, but

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mainly in 2004, parts of our organization would have had accreditations before that, and they ended up having to have an interim accreditation, so we brought the organization along to have all parts of it in 2007.

CHAYTOR, Q.C.:

Q. Okay, yes, because of course 2005, you became Eastern Health?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So there was a recommendation mentioned in the 2007 that there had been follow up to address clinical ethical issues. So presumably it's a recommendation that came from the 2004. Are you aware of what that was? What was -

MS. JONES:

A. That one wouldn't have come from the old Health Care Corporation, I don't think. It may have come from some of the other legacy boards, particularly Carbonear or the Health and Community Services or whatever, because I don't remember the old Health Care Corporation having an ethics recommendation, but the other six legacy boards may very well have because

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they would not have had the level of work done in ethics that we had, because we were a bigger board and had those resources associated with it.

CHAYTOR, Q.C.:

Q. Okay, so to your knowledge, there was no issue with any ethical clinical issues out of the Health Care Corporation?

MS. JONES:

A. No.

CHAYTOR, Q.C.:

Q. And you don't know what the issues may have been in the other legacy organizations?

MS. JONES:

A. In the other boards, it may very well have been structures or ethics education or consults. They would not have had access to the ethicist like we did, because we had a contract with Memorial.

CHAYTOR, Q.C.:

Q. Okay, if we could go back then to this specific ethical consult, and we're looking here at 0481, page two.

THE COMMISSIONER:

Q. Exhibit 0481?

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CHAYTOR, Q.C.:

Q. Exhibit 0481, yes, page two. Ms. Jones, did you receive a copy of this report?

MS. JONES:

A. Dr. Singleton sent me the copy of the report once it was completed. That ultimately went for filing in our system, just to let me know that in fact it had been completed.

CHAYTOR, Q.C.:

Q. Okay. So did you read the report when you received it?

MS. JONES:

A. I did.

CHAYTOR, Q.C.:

Q. You did, okay, and did you ask that any follow up take place?

MS. JONES:

A. Only that communication be--if you scroll down, I think that there was some reference to communication.

CHAYTOR, Q.C.:

Q. Okay. That may be on a different document. So I'm sorry, you asked that it be forwarded to communications, is that right?

MS. JONES:

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A. That Rick Singleton would have, in fact, made sure that communications was aware of it, because it says a press release prepared as a matter of--so being that they were not part of, that they would need to be aware that this consult had taken place and that they would have needed to be in the loop.

CHAYTOR, Q.C.:

Q. Okay, so you contacted who to make sure that happened?

MS. JONES:

A. Only Rick.

CHAYTOR, Q.C.:

Q. Okay, so you contacted Rick to make sure communications people were aware that one of the recommendations concerned a press release?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. Did you have any concerns with the content of the report or did you agree with the content?

MS. JONES:

A. There was nothing that struck me at the time that I would not have agreed with.

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CHAYTOR, Q.C.:
Q. And if we come down to the second paragraph, it starts with "the problem with the results was rooted in the test procedures used in the time period from 1997 to 2005." And then it goes on with, "In 2005 samples known to have been processed for this batch of patients were forwarded to Mount Sinai in Toronto for retesting at their lab." And "In the batch forwarded to Mount Sinai there were 101 samples from deceased patients. 19 of the retested samples produced results that may have resulted in a different care plan and follow-up than that implemented based on the original test results." Then "The important facts to the history and understand of this case include the following: There were no mistakes or technical errors at the root of this problem." Who determined the facts, first of all, that would be relied upon, is that something that's generated at the time that the group is brought together?
MS. JONES:
A. At the time the group is brought together.
CHAYTOR, Q.C.:

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Q. So the important facts to the history and to understand the case, that would have been brought forward by the people who you say were knowledgable about the issue?
MS. JONES:
A. Knowledgable at the table.
CHAYTOR, Q.C.:
Q. So those in attendance at the--in the room?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:
A. And there may have been, and you'll have to ask Dr. Singleton, whether in the prep work for this there was other information that he had gained to be brought forward to the table, but I would not have thought that because the people who were at the table would have been able to provide the background to this particular issue.
CHAYTOR, Q.C.:
Q. Okay. And when you read the report, did that raise any concern to you as to whether or not that, in fact, was a correct statement, "There

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were no mistakes or technical errors at the root of this problem." and whether or not that might have any impact on the outcome of the ethical consult?
MS. JONES:
A. As you have heard me say earlier on this morning, what was in the actual reviews that were done, peer reviews, that the information, we knew that they were moving forward on recommendations, but this would not have raised a flag to say I knew something different that had never been said that there were technical errors.
CHAYTOR, Q.C.:
Q. Um-hm. Your understanding, and again, this is in May, 2006?
MS. JONES:
A. Six.
CHAYTOR, Q.C.:
Q. And your understanding at that point in time, as much as you've heard had been concerning machinery and the fixation issue?
MS. JONES:
A. And the fixation issue and that we have policies and procedures, you know, our

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documentation was we were moving forward with documentation and solidifying that.
CHAYTOR, Q.C.:
Q. And "No mistakes or technical errors," do you read that as being broader than a technical error?
MS. JONES:
A. In the context of how the lab works, I don't know how you would read that, "mistakes or technical errors." I would have just thought they were moving forward with issues that had been brought forward, whether it was a technical error or not, I don't know.
CHAYTOR, Q.C.:
Q. Okay. "The main ethical issue" then, the next paragraph.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. "The main ethical issue in this case pertains to disclosure."
MS. JONES:
A. Um.
CHAYTOR, Q.C.:
Q. "There are several considerations regarding

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the duty to disclose, the right of families to be informed of results from the retesting in Mount Sinai and who should manage the disclosure process. The obligation to disclose information to families is based from an ethics perspective on the negative right of families to information about the deceased. A negative right respects the right of individuals or families to access information." So it's a right to access the information.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. "But does not oblige anyone to make direct contact with individuals or families to provide the information. The obligation to inform is different in this situation than if situations where a mistake had been made."

MS. JONES:

A. Um.

CHAYTOR, Q.C.:

Q. "Where the information would make a difference or potential difference in the care plan or interventions of the patient."

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MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And when you read that, did anything there jump out or cause you any concern or give you any further clarity as to what the word "mistake" may mean?

MS. JONES:

A. No. And I had to go back at least maybe once or twice to get this concept of negative right.

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. It would not have been a concept that--we--positive right, negative right didn't mean anything to me. But as I read it more, I did understand from my perspective what it meant.

CHAYTOR, Q.C.:

Q. Okay. So being--what do you understand then that to mean?

MS. JONES:

A. Well, if you go on to the second part of that, "A negative right respects the rights of individuals or families to access

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information." So that's come forward and looking for information. "But does not oblige the" Eastern Health at the time, "to direct contact with individuals or patients to provide information. The obligation is to inform, to inform is different if this situation were a mistake." And at this point in time you read earlier on where it says, "No technical errors, no mistakes."

CHAYTOR, Q.C.:

Q. Right.

MS. JONES:

A. So if you read the two of them in concert, that would be where I would have read that.

CHAYTOR, Q.C.:

Q. So would be a different situation if it were based on a fact situation where a mistake had been made?

MS. JONES:

A. That's right. And we have lots of instance where if, in fact, there is a death and there's a directly attributable to something that's happened, we deal with families all the time on that.

CHAYTOR, Q.C.:

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Q. So if a mistake had caused or contributed -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - or a mistake had been involved the care of the patient, so for example, if a mistake caused or contributed to the particular care that a patient received and that patient went on to die, regardless if the mistake was related to the death, would there be disclosure to the family that there had been a mistake made in the care or treatment plan?

MS. JONES:

A. The only ones that I would be aware of is if there has been a death and it's within a very limited time frame, right.

CHAYTOR, Q.C.:

Q. So if there's a death -

MS. JONES:

A. With an associated cause.

CHAYTOR, Q.C.:

Q. Or contributing factor, based on the treatment of the patient, then there would be -

MS. JONES:

A. Yes.

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CHAYTOR, Q.C.:
Q. - disclosure to the family?
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. But if there's not necessarily causal link or unknown if there's a causal link, is there still an obligation to disclose?
MS. JONES:
A. I'm not sure we come across that very often, because usually what happens is is that we have a situation in front of us, we're able to develop a causal relationship. This particular situation we had clients and families that are in excess of ten years, so I'm not sure. And we already have the instance here about technical errors or mistakes and already been referenced in the discussion that happened at this case.
CHAYTOR, Q.C.:
Q. Yes, so I guess that issue didn't get addressed in this consult?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:

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Q. Yes. Do you currently have the policy which addresses disclosure to the families of deceased patients?
MS. JONES:
A. No. Our disclosure policy continues to be the disclosure, one of individual patients, not public disclosure and not for mass, mass disclosures.
CHAYTOR, Q.C.:
Q. Now if we continue on then, it says, and I guess this is where the lawyer in the room comes into the picture, "While legally no one has the right to a deceased person's health record or other health information, in the context of the core values of Eastern Health and in the spirit of goodwill, it is appropriate that Eastern Health take reasonable steps to inform the community that this problem has occurred and that the information is available."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. What is the policy of Eastern Health for provision of information to the family or

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estate representatives of a deceased person? So if next of kin come forward and want information on their family, what's Eastern Health's policy?
MS. JONES:
A. If next of kin come forward, we will provide them, providing we can determine that it is the next of kin.
CHAYTOR, Q.C.:
Q. Right. So I take it if they're able to appropriately identify themselves -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - and they come forward with any questions regarding their relative, they would be provided with the information?
MS. JONES:
A. Yes. Chart and physician access, depending on what the issue is.
CHAYTOR, Q.C.:
Q. Right, okay. So regardless of what may be said here, whether or not there's a legal right to that information or not, it is the policy of Eastern Health to provide that

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information?
MS. JONES:
A. It's the practice of Eastern Health. We don't have a policy on that, it is the practice.
CHAYTOR, Q.C.:
Q. And that's been, I would take it, your practice for quite some time?
MS. JONES:
A. For quite some time.
CHAYTOR, Q.C.:
Q. And what are the core values of Eastern Health, is that a document, is that written somewhere?
MS. JONES:
A. They would be the values on which things such as respect, integrity, excellence, those kinds of things, so they would be listed out. Those were adopted in 2005 and we just reaffirmed and changed the nature of some of them in the fall through the board strategic planning process, so inherent in those values are all of the previous values, they may have different words around them. And we've also moved to have behaviours associated with the values, what we would expect for staff under

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particular values.
CHAYTOR, Q.C.:
Q. Okay. I'm sorry, what did you say they are?
MS. JONES:
A. I can't name them all off, but it would be respect, integrity, excellence, growth was in the original ones because initially they came out of the Department of Health's Strategic Planning document, that was early in 2005. We go through a process, an internal process where we consult with staff and talk about values and talk about what the organization wants, what the organization should be. And so we've just gone through an entire process in the spring of this year to look at values, to reaffirm values and then to bring them into our strategic planning documents as well as then those core values become part of the way that the organization lines up and is evaluated against. So we put them in our performance appraisals, we put them in our staff evaluations and those kinds of things. So this is what we expect our staff to act like.
CHAYTOR, Q.C.:

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Q. Would accountability and transparency be part of the core values?
MS. JONES:
A. Yes, it is, yes.
CHAYTOR, Q.C.:
Q. Would be -
MS. JONES:
A. Incorporated in. It may not be actually called accountability and transparency. But connectedness is a new word that we've used this time to connect with the public and the community.
CHAYTOR, Q.C.:
Q. What does that mean?
MS. JONES:
A. To be open, to be transparent and out there communicating.
CHAYTOR, Q.C.:
Q. And are those new--the open, transparent, the connectedness to the community, is that part of the revisions that were just made this fall?
MS. JONES:
A. That's part of the revisions, yes.
CHAYTOR, Q.C.:

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Q. That's part of the revisions.
THE COMMISSIONER:
Q. Openness, connectedness is openness, transparency?
MS. JONES:
A. We can get you, actually, a copy of that if you -
THE COMMISSIONER:
Q. Isn't that on your web site?
MS. JONES:
A. It is on the web site.
THE COMMISSIONER:
Q. I thought it was.
MS. JONES:
A. Right. The new word we use is "connectedness" because that makes more, you know, it made more sense when you read what it is that we're trying to do, link with the community and be open and transparent and those kinds of things, we've used that word.
CHAYTOR, Q.C.:
Q. Okay.
THE COMMISSIONER:
Q. While we're on the subject.
MS. JONES:

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A. Yes.
THE COMMISSIONER:
Q. I have a great deal of difficulty with the word "transparency." Every person who speaks it seems to think it's of a different thing.
MS. JONES:
A. Um-hm.
THE COMMISSIONER:
Q. So I'd really like your view as to what transparency means for Eastern Health.
MS. JONES:
A. It's been--we tie it with accountability. It's openness, responsiveness to questions or issues that come forward, and at the end of the day to the extent that we can, making that information available. So transparent in the way that we do our work, open to answering questions about how we do our work. And honesty is another word that's used in the behavioural side of that, as well, being honest with ourselves as we do our work and as we communicate.
THE COMMISSIONER:
Q. The word "transparency" coupled with "accountability" turns up in a piece of

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legislation, which is -
MS. JONES:
A. Yes.
THE COMMISSIONER:
Q. - relevant to your organization. In this context, though, does transparency mean something more than the legislation requires you to do?
MS. JONES:
A. Absolutely.
THE COMMISSIONER:
Q. Okay.
MS. JONES:
A. And it's in the way that we've talked about connectedness, and I think if you look at the document that we've actually worked with staff that talks about key behaviours and expectations, that is what we're out talking to staff about what we want to evaluate them on. They're really aspirational statements in that we expect everybody to work to achieve those kind of things.
CHAYTOR, Q.C.:
Q. And, I'm sorry, so what do you define as accountability?

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MS. JONES:
A. It is being accountable to the government, okay, to our staff for the decisions and the actions that we make, and then to the public for the services and that that we deliver on.
CHAYTOR, Q.C.:
Q. Okay. And accountability to the public in it being a publicly funded system?
MS. JONES:
A. Publicly funded system that we report to. We have annual meetings that report on the work that we do, the services that we provide.
CHAYTOR, Q.C.:
Q. Okay. And accountability then within, is there also internal accountability in envisioned -
MS. JONES:
A. Absolutely.
CHAYTOR, Q.C.:
Q. How does that work?
MS. JONES:
A. We talked earlier on about being if for your particular area and the mandate that you have, we talked about budget accountability, being responsible for identifying issues, bringing

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the issues forward, those kinds of things. And we expect staff to work to their best potential, given the resources and that and being accountable for the work that they actually do and delivering quality work.
CHAYTOR, Q.C.:
Q. Okay. And how do you measure whether or not the staff and the people working within your institution have been accountable?
MS. JONES:
A. I think lots of it is in the service that they provide, okay, and in the--in providing it in a certain way and in a fashion. We look at the issues that come forward, either in complaints or compliments to see how they do, and in lots of ways we audit things to make sure that things are complete or are completed in a way that it's supposed to be. So that is, you have an accountability to do the job to the best of your ability with the tools that we've got and that we have provided you with.
CHAYTOR, Q.C.:
Q. And how is that reviewed with staff?
MS. JONES:

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A. Performance appraisals and in direct feedback that we have with managers talking to staff in their work day and those kinds of things.
CHAYTOR, Q.C.:
Q. And is there also that kind of feedback or evaluation for management?
MS. JONES:
A. Yes, there is.
CHAYTOR, Q.C.:
Q. And I take it that's all the way up the chain?
MS. JONES:
A. Including the CEO.
CHAYTOR, Q.C.:
Q. Including the CEO and you would be accountable to the board?
MS. JONES:
A. To the board.
CHAYTOR, Q.C.:
Q. And the board chair would do your evaluation?
MS. JONES:
A. Yes. It actually is a committee of the board that does an evaluation of the CEO based upon a number of objectives that the board and the government has set for the position over the year and so that is a report that goes to the

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board chair and then there is a discussion with the board chair and the CEO.

CHAYTOR, Q.C.:

Q. And what about the physicians with privileges within your organization?

MS. JONES:

A. We are getting much more aggressive with a discussion between the clinical chiefs or the department heads with physicians. We have profiles of physicians in terms of their work profile, the kind of work that they do. We do have performance appraisals in the sense of physician performance appraisals, probably not done as regularly as we would like them to be, but there is definitely a move, there is a process, there are forms and that there is discussion that happens with the clinical chief or the division chair with the members of the department.

CHAYTOR, Q.C.:

Q. Okay, and you say that you're getting more aggressive along those lines, so is there a system in place and has been in place for awhile but hasn't necessarily been followed through on a regular basis or has there been

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no -

MS. JONES:

A. There's a credentialing part for medical staff, so every time that an individual comes forward for credentialing, there is a formal process around that credentialing, but we are wanting to make it more of a yearly thing, verses when your credentials are coming up for review and every three years or five years, depending upon what organization you had been in before.

CHAYTOR, Q.C.:

Q. And when was that initiated, that you would have -

MS. JONES:

A. Dr. Howell has got that well underway, but we had in Dr. Williams' time also been moving forward with documentation. It's not that the stuff is not done, it's not that they don't do audits and rounds, but it's the documentation part of the review performance that we're talking about.

CHAYTOR, Q.C.:

Q. And has there been any reluctance expressed towards that?

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MS. JONES:

A. I can't say there really is, lots of times it's a time constraint to be able to get it done, but not the reluctance.

CHAYTOR, Q.C.:

Q. Okay. And in terms of then moving it forward, Dr. Howell has responsibility for that.

MS. JONES:

A. Yes, that's on the physician side.

CHAYTOR, Q.C.:

Q. And does that also have to do with the decisions around employees of Eastern Health?

MS. JONES:

A. Credential physicians either way, employees or -

CHAYTOR, Q.C.:

Q. They're all put through the same?

MS. JONES:

A. All put through the same.

CHAYTOR, Q.C.:

Q. If we could just go back then to 0481, it says, "Contact with families ought to"--and I take it the word "be" is missing--"ought to be managed mainly by the risk manager with the assistance of competent staff and the

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Corporate Communications Department. The ethics consultation had several recommendations in this regard." So why would the contact with families be managed by the risk manager?

MS. JONES:

A. And I think the risk manager here in this nature of what is said here is the Quality Department because many of the contacts that were made with families involved in the ER/PR where there was no change in result was made by what we call quality facilitators in our organization or in the other regional health authorities were experienced nurses, so that would have been where the calls would have come from.

CHAYTOR, Q.C.:

Q. Okay, so obviously the plan is going to be that it is going to be managed by the risk manager with the assistance of competent staff.

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. And the Corporate Communications Department.

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And the Corporate Communications Department being, I guess, to look at the first item being a press release prepared.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. As this matter is being resolved, ought to mention that information pertaining to deceased patients may be available by contacting the appropriately designated officer number.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Efforts should be made secondly to ensure information about the retested samples be presented by an individual competent to explain the matters to a family member.
MS. JONES:
A. Right.
CHAYTOR, Q.C.:
Q. And thirdly, families of deceased patients

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whose samples have not been retested request the same information, then it should be explained that the sample has not yet been retested, but it would be on request.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. So the plan at this point in time was not to retest all the deceased.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Only if requested by the family.
MS. JONES:
A. Yeah, and you have to understand, as you've already gone through what the nature of this request for the ethics counsel was, we had results, yeah.
CHAYTOR, Q.C.:
Q. And then did this go ahead, like was there a press release issued at this point in time?
MS. JONES:
A. There wasn't that I know of at this point in time and then later on there was a decision to retest all of the deceased and then in

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February of this year, there was the public release. There was a follow up in the papers with the local media, there was follow up with the "Globe and Mail" and then there were public service announcements.
CHAYTOR, Q.C.:
Q. So it's sometime later, it's February 2008 that that actually happens.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. After all the deceased samples have been retested.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Do you know why at this point in time the set out plan was not followed?
MS. JONES:
A. I can't tell you why that was not actioned at that time.
CHAYTOR, Q.C.:
Q. You haven't had any discussions around that?
MS. JONES:
A. No.

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CHAYTOR, Q.C.:
Q. And it didn't come up at the executive management level?
MS. JONES:
A. No, it didn't.
CHAYTOR, Q.C.:
Q. And being the person who would be responsible for ethics and pastoral care, any follow up on that or speaking to Dr. Williams to find out why you haven't had that discussion?
MS. JONES:
A. No, and this, this is a consult and what we do with consults and ethics as they go back to the orderer of the consult or the requester of the consult, so they are a set of recommendations and whether in fact those are actioned or not, really depends upon--it is literally a consult. The individual that requested it would then action it to the extent that they were--wished to action it.
CHAYTOR, Q.C.:
Q. So this went back to Dr. Williams.
MS. JONES:
A. Yes, it did.
CHAYTOR, Q.C.:

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Q. And he was the person who initiated it.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So why at that point in time it wasn't acted upon, he'd be the person to give that answer.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And you haven't had any discussions with him on that?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. If we could have P-0778 please? Now, Ms. Jones, this document is e-mails from Rick Singleton to a number of people, including yourself.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And Dr. Williams, Heather Predham, Kara Laing, Dr. Denic and it's dated May 19th, 2006 and you can see this is an e-mail where down at the bottom, the earlier one is May 19th, 2006

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and Rick Singleton is writing to the same group of people, including Daryl Pullman at that point in time.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And it's regarding the ethics consult and he indicates he's been asked to organize an ethics consult to discuss the ethical issues regarding disclosure of information, ER/PR results from Mount Sinai to families of the deceased patients. When organizing an ethics consult, we need to get the right people, the right mix of people to have a discussion and generate reasonable recommendations." And at this point in time he's looking at Dr. Pullman as an ethicist, Dr. Cook and Dr. Denic from the lab, Dr. Laing from the cancer program.
MS. JONES:
A. Yes, uh-hm.
CHAYTOR, Q.C.:
Q. And then you'll see at the top there's a response from May 19th, 2006 again, just about a half an hour or so later where he's indicating that May 29th is not possible and

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they're now looking at dates in June, the 13th, the 16th.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. If we could have then, please and certainly at this point in time and you'll see down here you're copied on this e-mail.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. But you're also sent it directly, so you probably got it twice. Certainly in looking at the mix of people to have around the table, there's no indication on May 19th by Dr. Singleton of a necessity of having a lawyer present?
MS. JONES:
A. No, not at that time, these are internal people. He may very well have had some other discussion, but you'll have to ask him.
CHAYTOR, Q.C.:
Q. Well Dr. Pullman, is he internal?
MS. JONES:
A. Yes, he is, he is an ethicist at Memorial and

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we access him through our meditec system.
CHAYTOR, Q.C.:
Q. So that's considered internal.
MS. JONES:
A. He's considered internal.
CHAYTOR, Q.C.:
Q. Okay, and so do you know how it came up that, whose idea it was to include a lawyer on the panel?
MS. JONES:
A. I have no idea.
CHAYTOR, Q.C.:
Q. If we could look then at 0779? And this, again, is a continuation of the e-mail exchange and this is just Dr. Laing gets back to say that she's going to be away from June 13th to the 20th.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And she's replied fairly promptly on May 19th, same date.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:

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Q. And 0780 please? And this is an e-mail from Mr. Singleton and this one is dated June 9th, 2006?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Looks to be the same group of people, including yourself and Daryl Pullman and the same physicians and there's a F. Brunger.
MS. JONES:
A. That's Fern Brunger who is an ethicist and Natalie Bandrauk.
CHAYTOR, Q.C.:
Q. And Dr. McCarthy is included in there.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And he's indicating that "we will have to again reschedule our meeting to discuss the disclosure of information regarding deceased patients. We have had difficulty getting a time with the lawyer who has been handling the case. He's in court almost every day this month." And so they're looking to reschedule to June 19th and "Mr. Dan Boone, the lawyer,

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will join us a bit late." So the new time is then set for June 19th, 5:00 p.m.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And you would have received that e-mail?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. But again you don't know what happened in between and who suggested the lawyer?
MS. JONES:
A. And I know that Rick would have kept me in because I had called him and said Dr. Williams wants this done, right.
CHAYTOR, Q.C.:
Q. Okay, and if we could go then, please, to 0781? And this is again from Rick Singleton and it's to Bob Williams. You are not copied on this.
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. And it advises "Yesterday we had an ethics consult on ER/PR. Very good discussion and

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outcome. I will forward the summary later. In the meantime, there's an issue that came up. An issue came up that I should give you a heads up, I want to give you a heads up on. Dr. Denic had a document or a report with him from an external reviewer of the lab processes, et cetera here. He read from it and mentioned that he would use the report as part of information he was sharing with others. It seems the reporter opinion had been done for Dan Boone and he did not want the information shared, at this time it is privileged. Dr. Denic understood from you that he was not to copy it, but Dan seemed to be a bit concerned that it was being quoted, the expert being referred to. Dan's concern seems to be about the privilege status of the report which he may need in proceeding later on. Anyway, just thought I wanted to let you know there was a bit of fuss about it." Did anyone discuss that with you, that this issue came up?
MS. JONES:
A. No.
CHAYTOR, Q.C.:

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Q. So you weren't aware of that.
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. If I could just go back please, and this indicates that the ethics consult took place yesterday, so that being June 19th, I would take it, the day before.
MS. JONES:
A. 19th, yes.
CHAYTOR, Q.C.:
Q. And if we could just go back then to the exhibit P-0481 please? This is dated May twenty-ninth, two thousand--and it looked like there had been a seven there and it's changed to a six?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Do you have any idea why that would be?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. And obviously this would predate if the consult didn't take place until June 19th,

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2006, the report couldn't have been generated May 29th, 2006?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. You have no idea?
MS. JONES:
A. I have no idea.
CHAYTOR, Q.C.:
Q. Okay. If we could have then P-0782? And here we have what appears to be the same document.
MS. JONES:
A. To be the same letter. Yeah.
CHAYTOR, Q.C.:
Q. Dated June 20th, 2006.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And over here in the corner we have letterhead from General Hospital and if you scroll down through it and I don't expect you to take the time to do it, but I can tell you that it appears to be the same document.
MS. JONES:
A. Same document, yes.

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CHAYTOR, Q.C.:
Q. But for the date and but for the letterhead in the top right-hand corner.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And again, I take it you can't shed any light on that?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. If we could look at 0783 please? And this one appears to be the report that you would have received.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And it's sent June 22nd, 2006 from Mr. Singleton to yourself and to Dr. Williams.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. "Re: ethics consult. Hi Bob, attached is a report from the ethics consult, re: ER/PR. Thanks, Rick."

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And if we look at this one, it's dated June 23rd, 2006 -
MS. JONES:
A. And Bandrauk is corrected.
CHAYTOR, Q.C.:
Q. Bandrauk is scratched off and corrected, there's no letterhead in the top right corner and, but I would suggest to you that the content -
MS. JONES:
A. It's the same one.
CHAYTOR, Q.C.:
Q. I can't say I've read every single word, but the comparison I've made, it appears to be the same.
MS. JONES:
A. Yes, the same.
CHAYTOR, Q.C.:
Q. How many consults took place?
MS. JONES:
A. According to this, one.
CHAYTOR, Q.C.:

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Q. And in terms of the dates and why the dates are different, you have no idea?
MS. JONES:
A. I have no idea.
CHAYTOR, Q.C.:
Q. So we'll ask the author of the report, I take it.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. If we could have 0487, please, Registrar? And I'll have to give you a new page reference because I understand our page numbers have changed, but the document I'm looking for is dated 7th of June, 2006. For those of you who have the exhibits from earlier, your page references would have changed, but I think it's just because there was a lot of blank pages, there was a lot of redactions and to speed up the process, we got rid of the redacted pages. Okay, here we go, it's the June 7th, 2006 and this is minutes of executive management meeting held on that date.
MS. JONES:

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A. Yes.
CHAYTOR, Q.C.:
Q. And again, Mr. Tilley is the chair, you are in attendance, as is Mr. Williams and Ms. Bonnell is not here on this date.
MS. JONES:
A. Okay.
CHAYTOR, Q.C.:
Q. I just want to take you to page 9 of the document and this is indicated to be guidelines for external briefing note/confidentiality. "For clarification purposes, Louise Jones advised the guidelines for external briefing notes should be defined. An ethics consultation on briefing notes and the content of information was requested and placed on hold. Forwarding such a document outside the organization has serious confidentiality issues. It was also noted that briefing notes to the minister that go to cabinet are protected. However, briefing notes sent directly to the minister are not. All documents forwarded to the department must have confidential watermark. Any documents forwarded externally must go through the

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director level first prior to release and in some cases, where necessary, through the executive". Now, Ms. Jones, can you tell us what was that all about?
MS. JONES:
A. That particular issue was a request that came down into the organization into our mental health program looking for information on an individual client. And we had a physician in our mental health program who was very distraught about individual patient information going to the Department of Health and was questioning why, in fact, the department would need information on an individual patient. We had had discussions, an ethics consult on that particular issue and this is the result of that. So, it really revolved around requests inside the organization for information that was on specific patients. And there was a real question mark on whether, in fact, that should be released to the department.
CHAYTOR, Q.C.:
Q. And who was asking for an ethics consultation on briefing notes and the content of

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information? Who was asking for such consult?
MS. JONES:
A. Actually, it would have been Dr. Kevin Hogan, who was -
CHAYTOR, Q.C.:
Q. Okay, so it was a physician actually asking for -
MS. JONES:
A. It was a physician, absolutely.
CHAYTOR, Q.C.:
Q. He was asking for consultation on briefing notes. So, I take it was a briefing note that was forwarded on a patient?
MS. JONES:
A. I'm not sure if it actually went, but there was definitely a briefing note prepared and I'm thinking that it went, yeah. Yes, it did go and he was aware of it after the fact. And therefore, he had acted for a question for discussion and for an ethics consult about patient information, individual patient information going outside of Eastern Health.
CHAYTOR, Q.C.:
Q. Okay. And did that consultation ever take place, a consultation on briefing notes and

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information that would go externally?
MS. JONES:
A. Yeah, and -
CHAYTOR, Q.C.:
Q. Has that taken place?
MS. JONES:
A. - that was -
CHAYTOR, Q.C.:
Q. It was put on hold as -
MS. JONES:
A. It was put on hold. I'm not really sure, I would have to go back and check on that to see where that actual (sic.) went. But there was, obviously, very much discussion with what kind of information would go outside of Eastern Health; if it was individual patient specific information then it probably was it. If it was a generic issue, then that would be very different that asking for individual patient information.
CHAYTOR, Q.C.:
Q. Okay. Now, this issue coming up in June of '06 -
MS. JONES:
A. Yes.

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CHAYTOR, Q.C.:
Q. - when obviously there are briefing notes, at this point in time pertaining to the ER/PR issue -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - or certainly assistance from Eastern Health in drafting or providing information to the department in their briefing notes, was this, at all in the context of what was happening with the ER/PR issue?
MS. JONES:
A. No, this was very specific to a mental health case.
CHAYTOR, Q.C.:
Q. And this in terms of an ethics consultation on briefing notes and the content of information. It appears to be very broad and not peculiar to any particular case.
MS. JONES:
A. Yes, that's right.
CHAYTOR, Q.C.:
Q. Has whether or not the ethics consultation took place, which you're not sure of right now, has any policy come into being at Eastern Health to deal with this issue?
MS. JONES:
A. No, no policy, okay, but just the discussion around notes to go through and what is a level of information that should be inside of those notes.
CHAYTOR, Q.C.:
Q. So, that has taken place -
MS. JONES:
A. That has taken place.
CHAYTOR, Q.C.:
Q. - a discussion on that. And what's the outcome of those discussions?
MS. JONES:
A. The outcome of those discussions is that on generic issues, okay, you see this process here where anything that is going outside of Eastern Health really should be signed off on by a director or an executive level, so that we are aware of what's going to the department and what is being requested. Sometimes these are very technical and it may be the department is calling into our finance department looking for something and it really

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is basic information, but if there are issues other than that, then what is it, what is the kind of information that the department is requesting and what level of detail does the department need to move forward with whatever it has to do on a particular issue.
CHAYTOR, Q.C.:
Q. So, the outcome is that someone at the executive level now has to sign on information provided.
MS. JONES:
A. If there's briefing notes, per se, okay.
CHAYTOR, Q.C.:
Q. Or information to be provided for briefing notes?
MS. JONES:
A. Not all information to be provided. Even in to this year we've had discussion with our directors to say that the executive should be aware of the information that's going to the department and not necessarily having to sign it off and the executive will determine themselves if, in fact, it comes from them, or it can come from a department or a manager that might be making contact with.

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CHAYTOR, Q.C.:
Q. Okay. Now, this is coming up for discussion, executive management in June of 2006.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. When was the decision made that the executive would have to either be notified or sign off on any information going -
MS. JONES:
A. We've been trying to do that for years, okay, but there's been more requests inside of Eastern Health for particular types of information and it depends on maybe complaints that the department has been getting and they want background information. So, depending on the personal contact or the link inside the organization, there are calls coming inside of Eastern Health every day.
CHAYTOR, Q.C.:
Q. So, what you're saying is that had been the rule, in any event.
MS. JONES:
A. It had been increasing.
CHAYTOR, Q.C.:

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Q. And continues to be increased, is that it?
MS. JONES:
A. And we do try to keep a handle on what is going out of the organization.
CHAYTOR, Q.C.:
Q. And we know that, for example, Heather Predham, in this situation, provided information for briefing notes -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - or at least, one, that ends up August 2006 in the Premier's office.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Would anyone have signed off on that?
MS. JONES:
A. I have no idea on that particular note.
CHAYTOR, Q.C.:
Q. But the rules should have been that someone at the executive level would either have to have been informed of it or signed off on it?
MS. JONES:
A. And that is depending--it was then up to the

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individual who was preparing that note or getting that information ready.
CHAYTOR, Q.C.:
Q. Yes. To make sure that he appropriate sign off or approval had been maintained.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And who, in Heather Predham's case, would that be? Who would be the executive person that she would have to -
MS. JONES:
A. In two thousand and -
CHAYTOR, Q.C.:
Q. In 2006.
MS. JONES:
A. - August 2006, I would expect because Heather reports to Pam Elliott at that time who is the program director, and at that time, Bob Williams had quality.
CHAYTOR, Q.C.:
Q. Okay. And if it were now in 2007, Pat Pilgrim -
MS. JONES:
A. Pat Pilgrim has quality now if it was coming

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from Heather Predham.
CHAYTOR, Q.C.:
Q. I guess that's since Dr. Howell took over, it would have been Pat Pilgrim.
MS. JONES:
A. In the fall of 2006.
THE COMMISSIONER:
Q. So, is the long and short of this that any briefing note that would haven been prepared by Heather Predham should have either been signed off on or at least the content having been run past -
MS. JONES:
A. It should, yeah, that would have been the long and short. I don't know, even in my role today, briefing notes to go elsewhere in the department, we usually provide information. In the ten months that I've been there, I've never signed off or I'm not aware--I'm not saying it didn't happen, of a briefing note. We always send information and we send it in the terms of a note, but having it called a briefing note, I'm not sure or Heather was providing information into a briefing note, I'm not sure what that August of 2006

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contained.
CHAYTOR, Q.C.:
Q. I take it, whether or not it's formally called a briefing note or it's documentation which ultimately might end up in a briefing note.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. You would expect that it would run by the appropriate member of the executive?
MS. JONES:
A. Somebody inside the organization.
CHAYTOR, Q.C.:
Q. The appropriate member of the executive.
MS. JONES:
A. On this particular issue--because it was so much an issue for Eastern Health, I would have expected lots of other kinds of things. I may not expect that an executive member on a less sensitive issue would have been involved in some of the discussions.
CHAYTOR, Q.C.:
Q. And if your employees name is going to end up being attached to the document, the briefing note that ends up the Premier's office, and

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your employees name is on that document as having been a drafter or contributor to the briefing note, you would expect before that -

MS. JONES:

A. Happened.

CHAYTOR, Q.C.:

Q. - happened, it would have been run by an executive member of your team.

MS. JONES:

A. Yes, somewhere along the executive team.

CHAYTOR, Q.C.:

Q. What does -

MS. JONES:

A. I'd also say, lots of time we provide information to the department and we don't know in what ultimate format that ends up being used inside the department. So, we may be asked for information, whether it's on costing information or whatever and we are a contributor of something that the department is doing. So, whether in fact, we know in the beginning that it becomes part of a briefing note that serves to go up the line to Cabinet or that it really--we do provide information.

CHAYTOR, Q.C.:

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Q. Right, but the rule being though that the content of the information which could ultimately end up in a briefing note or any information, is there a magic to it being a briefing note as opposed to--if information is provided, what difference if it's a briefing note or not?

MS. JONES:

A. And I don't know how the department works on its briefing notes and it requests lots of information.

CHAYTOR, Q.C.:

Q. Yes.

MS. JONES:

A. And we do get requests that says central government is looking for information on A, B, C or D. Lots of times it's technical or lots of times it is, in fact, factual, costs of, how many of something we're doing. So, therefore, those are--they may be sensitive in terms of what the issue is that they're looking at on that particular day, but this particular issue, we would have probably been keeping the department informed on what was going on.

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CHAYTOR, Q.C.:

Q. Okay. So, I think then what you're saying is if someone picks up the phone from the department and has a question, whether it's on the budget or something financial, the person who can answer it there and then, you wouldn't expect that they'd have to run off and find the appropriate member of the executive to give that information -

MS. JONES:

A. And that's where we leave some discretion, okay.

CHAYTOR, Q.C.:

Q. Right, but if it's information that's clearly been articulated that it's being put together for a briefing note or if it's a -

MS. JONES:

A. That's a different story.

CHAYTOR, Q.C.:

Q. - document that's drafted or a portion of a document that's drafted with the intent that it go in a briefing note, those are the kinds of things that you would expect -

MS. JONES:

A. That we would absolutely want to understand

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that that's what they were being used for and they would have executives sign off.

CHAYTOR, Q.C.:

Q. They would, okay. The next paragraph says, "It was also noted that briefing notes to the minister that go to Cabinet are protected; however, briefing notes sent directly to the minister are not." Is this still you advising on this issue?

MS. JONES:

A. I wouldn't even know that.

CHAYTOR, Q.C.:

Q. So who is saying this? This is not you saying this?

MS. JONES:

A. Well for the clarification, it may very well be during the discussion that around executive table there would have been people who would have known that, but personally, I wouldn't have known that. I certainly know that the, what do you call it, the briefing notes to the minister that go to Cabinet are protected. We all would know that, all right, briefing notes that go from us to the minister, I would never have thought that they were protected.

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CHAYTOR, Q.C.:
Q. No, this says that they're not.
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Briefing notes sent directly to the minister are not. So you understood that.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. You understood that briefing notes to the minister that go to Cabinet are protected.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. You would have known that.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. However briefing notes sent directly to the minister are not, so -
MS. JONES:
A. I understand that, but I don't know whether I would have -
CHAYTOR, Q.C.:

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Q. That's your understanding.
MS. JONES:
A. I don't know whether I would have said that in that context.
CHAYTOR, Q.C.:
Q. Why is this being said in this context?
MS. JONES:
A. I can't answer that question, only to say if you go on, that all documents that we are sending to, must have confidential watermark and I can tell you that that doesn't happen on a basis for information that is going, going up.
CHAYTOR, Q.C.:
Q. On any documents forwarded externally must go through the director level first prior to release and in some cases, where necessary, go through the executive.
MS. JONES:
A. Go through the executive.
CHAYTOR, Q.C.:
Q. And what you're telling us there is whatever documentation goes out, goes through the director. If it's intended for a briefing note, it goes through the executive, is that

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what you're saying?
MS. JONES:
A. That would be what our intention would be.
CHAYTOR, Q.C.:
Q. Okay, and this whole idea of briefing notes going to the minister, sent directly to the minister from Eastern Health, not being protected, but those that go from the minister to the Cabinet being protected, you understand that to be the case.
MS. JONES:
A. Yes. So any information that we give to the department is not protected information.
CHAYTOR, Q.C.:
Q. If it goes directly to the minister.
MS. JONES:
A. Yeah, and I don't know at any point where we would be sending something directly to Cabinet, we often get a, you know, central government is looking for information, but it's always coming through the department.
CHAYTOR, Q.C.:
Q. What did this have to do with the discussion that Dr. Hogan's concern? How is this relevant to that?

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MS. JONES:
A. I think the discussion here if you talk about it is all on briefing notes and that was one issue that we had asked for that Dr. Hogan was looking for an ethic consult because he was very concerned about private patient information going into a departmental focus that was private patient information and I'm sure that the discussion then broadened to the entire aspect of briefing notes.
CHAYTOR, Q.C.:
Q. So the whole issue of briefing note going to a minister that ultimately goes to Cabinet being protected, that's something that was discussed at executive management?
MS. JONES:
A. It would have, according to these minutes and, you know, that's two years ago. I can't remember the context, but I definitely know what the first part was all about because there was a lot--we had an individual physician who was very upset and I do remember that.
THE COMMISSIONER:
Q. And why do they have a reference to

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"confidential watermark"?
MS. JONES:
A. Being that, just like you would have draft on it, anything that would go, we would want it to say "confidential" and that never did action -
THE COMMISSIONER:
Q. So you would acknowledge that anything you sent to the minister could go anywhere?
MS. JONES:
A. Could go anywhere. And I can tell you that that was never actioned, I don't know of anything that really goes through even last week when I had to do something, we didn't put "confidential" on it, right.
CHAYTOR, Q.C.:
Q. So that has not become -
MS. JONES:
A. That has not become practice.
CHAYTOR, Q.C.:
Q. But the last sentence here about documents forwarded externally, that is the practice and remains the practice that it must go through the director level and if it's briefing notes, through the executive level.

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MS. JONES:
A. Yes, and I reinforce that when I had a meeting, when I came in this role in September where I had senior management come together where we were having a fair number of calls inside the organization, us not knowing all of the bits and pieces of information that were going up and so, really I implored both physicians, as well as senior managers who were in that room that day, to make sure that they executive is in tune with what the department is asking for and if in fact, not to make it cumbersome, but that the executive, particularly on sensitive issues need to know and be party to the discussion and what goes forward.
CHAYTOR, Q.C.:
Q. Ms. Jones, do you know of any instances where there was thought given to giving information which may be of a sensitive and confidential nature and efforts being made by Eastern Health to somehow protect it by sending it through with the intent that it end up in Cabinet?
MS. JONES:

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A. No.
CHAYTOR, Q.C.:
Q. You don't know of any incident?
MS. JONES:
A. I don't know of anything.
CHAYTOR, Q.C.:
Q. And this again is June 2006 and this had nothing to do with the ER/PR issue?
MS. JONES:
A. No, it didn't.
CHAYTOR, Q.C.:
Q. And we've heard from then Minister Osborne that the briefing note that I mentioned to you that Heather Predham's name is attached as being one of the drafters or contributors that ended up in the premier's office, that happened in August of 2006.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. 2006, so a couple of months after this discussion and Minister Osborne was somewhat taken back that he had never seen the briefing note. So that's just a coincidence that this is in your--being discussed at executive

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management at this point in time.
MS. JONES:
A. Uh-hm, yes, they're totally unrelated.
CHAYTOR, Q.C.:
Q. Totally unrelated.
MS. JONES:
A. Totally unrelated.
THE COMMISSIONER:
Q. When you find a convenient spot, we'll take the afternoon break.
CHAYTOR, Q.C.:
Q. Okay, that's fine.
THE COMMISSIONER:
Q. Okay, fifteen.
(RECESS)
THE COMMISSIONER:
Q. Please be seated. Ms. Chaytor?
CHAYTOR, Q.C.:
Q. Commissioner, I have bad news, yet another exhibit.
THE COMMISSIONER:
Q. Okay, what number is this one?
CHAYTOR, Q.C.:
Q. I'm sorry, Ms. Jones, but this is the one that you've been very gracious in getting for us

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quickly, 0784 and it's the letter that Ms. Jones referred to and the package attached to the letter that she found in Mr. Tilley's office when she assumed the role.

THE COMMISSIONER:

Q. Okay, so that's P-0784 entered.

EXHIBIT ENTERED AND MARKED P-0784

CHAYTOR, Q.C.:

Q. Thank you. We might as well go right to that exhibit then, if we could, 0784, please Registrar? Okay, Ms. Jones, this is the letter, I take it, that you found on your first day sitting in your new office?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Yes, okay, May 30th, 2007 it's dated.

MS. JONES:

A. That's right, yes.

CHAYTOR, Q.C.:

Q. And it's indicated to be delivered by a courier?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

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Q. And it's a letter addressed to Mr. John Abbott, Deputy Minister of Health.

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. "Dear John, sincerely George Tilley", not signed, president and chief executive office.

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. And enclosing five reports.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And those five reports being what?

MS. JONES:

A. Well we would have had the Banerjee and the Trish -

CHAYTOR, Q.C.:

Q. Wegrynowski.

MS. JONES:

A. - original reports and the six-month follow up and I'm not sure, it says five.

CHAYTOR, Q.C.:

Q. Yes, now if we read down through the letter,

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it also refers to "the report prepared by Dr. Allen Gown".

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. "Was requested by HIROC and therefore not ours to release."

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Was that report also in the package that you found on his desk?

MS. JONES:

A. I didn't read that report. This actual package, when I picked it up from my secretary today, there was an attachment to it with little pink things on it, which would have been me reading the report, that was the original report that I read, right.

CHAYTOR, Q.C.:

Q. Okay.

MS. JONES:

A. But the Gown report, I don't know.

CHAYTOR, Q.C.:

Q. The Gown report was included though in the

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package, I take it?

MS. JONES:

A. I don't know, I just picked the package -

CHAYTOR, Q.C.:

Q. Was included in -

COFFEY, Q.C.:

Q. Just if I could, Commissioner, just so we're clear, the packages delivered to us today by Mr. Simmons included a Gown report. Now as soon as that was identified, Commissioner, I saw Gown's name on it and in fact, you would have, some people in the room would have seen it, I walked in late and I passed, other than identifying Dr. Gown's name, I gave it back to Mr. Simmons because, of course, it would be solicitor/client privilege, so it was in the package.

MS. JONES:

A. Okay, and I did -

COFFEY, Q.C.:

Q. Just to let you know, it was identified as G6.

MR. SIMMONS:

Q. Madam Commissioner, I want to thank Mr. Coffey for noting that. The package arrived just minutes before we started lunchtime and we

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passed it directly on without realizing that other document was part of it, Mr. Coffey graciously recognized that.

THE COMMISSIONER:

Q. Thank you.

CHAYTOR, Q.C.:

Q. So it appears then that the package that you would have found would have included the two-- Ms. Wegrynowski's reports, two Dr. Banerjee's and one report from Dr. Allen Gown.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Now if we read the letter, though, it says that "Further to your request, I am attaching reports that were prepared in relation to the ER/PR issue. Please note that the reports prepared by Trish Wegrynowski and Dr. Banerjee were prepared as a peer review request and to that extent, we have performed it under our quality umbrella to ensure its protection from future release. The report prepared by Dr. Allen Gown was requested by HIROC and therefore, not ours to release. If need be, we can arrange to have the laboratory leaders

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present on these items." Now, Mr. Coffey is just indicating to me here that there was also included in the package the review of immunohistochemistry lab by Terry Gulliver, October 13th, 2005. So perhaps that was the fifth report that was to be included.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. In what was going to the department.

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. I guess only Mr. Tilley will be able to tell us that when he comes back.

MS. JONES:

A. That's right and initially when I picked it up at the office today, if you just scroll down, I thought that was my signature, but that is not my writing, so -

CHAYTOR, Q.C.:

Q. This "never sent"?

MS. JONES:

A. Yeah, I thought it was and maybe if I saw the original, when I looked at it quickly, I

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thought that was mine, as I crossed out and sometimes -

CHAYTOR, Q.C.:

Q. We can get the original.

CHAYTOR, Q.C.:

Q. - the resolution on the computer is not very good because initially I did actually think that I had crossed it and just said never sent, file it away.

CHAYTOR, Q.C.:

Q. Yes, because I was going to ask if you had written that, how would you know it was never sent?

MS. JONES:

A. Because I asked the secretary.

CHAYTOR, Q.C.:

Q. Who is Joyce Penney?

MS. JONES:

A. Joyce Penney, did she ever remember sending this and she said no.

CHAYTOR, Q.C.:

Q. So she hadn't remembered sending it?

MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

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Q. And it says "delivered via courier" on the top?

MS. JONES:

A. Yes, that would have been--Joyce would have printed the letter and that would have probably been the intent that it was to go by courier.

CHAYTOR, Q.C.:

Q. And the letter was to be cc'd to Dr. Howell and Heather Predham.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And did you ask either of those individuals if they ever received a copy of this letter?

MS. JONES:

A. I would suspect that at this point in time where it's not gone out, that Ms. Penney, I can ask that question, whether she would have ever sent -

CHAYTOR, Q.C.:

Q. So you have the original now?

MS. JONES:

A. That's not my writing.

CHAYTOR, Q.C.:

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Q. That's not your writing. So when you picked this up and was it already marked on?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So when you picked -
MS. JONES:
A. That's not my writing.
CHAYTOR, Q.C.:
Q. When you picked it up "never sent" was already written on it and it was already crossed off?
MS. JONES:
A. Yes, "never sent".
CHAYTOR, Q.C.:
Q. And it was already crossed off.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. So that's the way you found the package.
MS. JONES:
A. That's the way I found the package on the desk right here, on the front of the desk.
CHAYTOR, Q.C.:
Q. Okay, and you're showing on the top of the desk?

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So it was on the--was it buried underneath anything or was it in plain view on top?
MS. JONES:
A. There may have been lots of things on top of it, okay, because the two file trays are here and the report, by the time I got down to what was on the desk, this is what I found and I thought, okay, never sent.
CHAYTOR, Q.C.:
Q. But it was actually on the top of the desk.
MS. JONES:
A. Yeah, it was on the desk in the office.
CHAYTOR, Q.C.:
Q. And not in any drawer.
MS. JONES:
A. No, I don't ever remember finding it in the drawer.
CHAYTOR, Q.C.:
Q. So your recollection is on the top of your desk?
MS. JONES:
A. Right there.

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CHAYTOR, Q.C.:
Q. Okay. And it included the, obviously, the reports of Trish Wegrynowski and Dr. Banerjee.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And I just want to be clear because in mentioning the Gown report a few minutes ago, you said you didn't read that, you've never read that report, I take it?
MS. JONES:
A. No, well I didn't even--well now that you say it, I would have understood that HIROC would have done a report, but Allen Gown is not a name even that Dan Boone would have ever said anything to me about.
CHAYTOR, Q.C.:
Q. When you find this package, you gave it--you asked Joyce Penney whether or not she had recalled ever sending it.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. And why would you have to ask her that if it's got crossed off "never sent" written on it?

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MS. JONES:
A. Because I know by looking at the names that these are peer review, okay, documents that Dr. Banerjee documents and to send them to the department when we had always talked about them being peer review and protected under the Evidence Act, that was a very unusual--I was very surprised to see that.
CHAYTOR, Q.C.:
Q. So Mr. Tilley, your predecessor in thinking that the department was an extension, I think was his word, so in sending it to--he also was of the view they were peer review or an understanding that that's what they were being classified as, but he obviously was going to send it on to Mr. Abbott when Mr. Abbott requested it and saw the department as some sort of extension.
MS. JONES:
A. You'll have to ask -
CHAYTOR, Q.C.:
Q. That's not your view?
MS. JONES:
A. That would not have been my view.
CHAYTOR, Q.C.:

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Q. That would not have been your view.
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. So even though your predecessor was prepared to send it to the department, you would not have been?
MS. JONES:
A. And I did not.
CHAYTOR, Q.C.:
Q. And you did not, okay. So you went on to ask, even though it had "never sent" written on the letter with crossed out, you still asked Mrs. Penney whether or not this had in fact been sent?
MS. JONES:
A. Yes. And she would have, because "by courier" would have meant that there would have had to be some arrangement that she would have had to make.
CHAYTOR, Q.C.:
Q. Yes, so why did you want to reassure yourself on that?
MS. JONES:
A. Oh just everything on this desk was very new

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and I was not aware of the process that Mr. Tilley would have had with working with his secretary and that, and this is the 9th of July, so here we have -
CHAYTOR, Q.C.:
Q. I'm sorry, when you are finding this -
MS. JONES:
A. Well it wouldn't have been the 9th of July because there were too many things going on, even the 9th, 10th and 11th, but by the time I worked my way down through the desk, in terms of seeing what was there and what was on the desk, this faced me. And knowing "never sent" meant that he obviously had gone to the process of dictating a letter or writing a letter and having it printed, but not sending it.
CHAYTOR, Q.C.:
Q. Did you ever ask or have occasion to speak to Mr. Tilley about this?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. And what about Dr. Howell or Heather Predham, they are cc'd on the letter?

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MS. JONES:
A. I didn't talk to them, I just assumed that the whole thing was not sent.
CHAYTOR, Q.C.:
Q. So you don't know if they received the letter or not or--did you make inquiries as to how Mr. Tilley would have the reports in his possession?
MS. JONES:
A. No. Mr. Tilley was gone by that time.
CHAYTOR, Q.C.:
Q. So you didn't ask Mr.--Dr. Howell for example?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. But you felt that you weren't going to read the reports yourself, you gave them to Mrs. Penney.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. What did she do with the reports?
MS. JONES:
A. She filed them away. When I called today, she had them, wherever secretaries file stuff that

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they -
CHAYTOR, Q.C.:
Q. Within your office, though, I take it?
MS. JONES:
A. Yes, within our office.
CHAYTOR, Q.C.:
Q. So she had the reports, copies of the reports in your office.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And was able to put her hands on it fairly quickly and you weren't curious when you found this sitting on your desk, you weren't curious to say -
MS. JONES:
A. Well I said, actually as I said to you this morning, I did have to read the reports.
CHAYTOR, Q.C.:
Q. Yes, but at the time when you first discovered them.
MS. JONES:
A. I guess in the CEO role I would have expected at some point to probably have a look at them or at least be aware of, but that was not

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anywhere in my--in the front of what I was doing and it was only when we had to start having the discussion about releasing the reports here that I really gave an in-depth review of them to see what was in them.

CHAYTOR, Q.C.:

Q. So you didn't until they were to be released -

MS. JONES:

A. Until we had to make a decision about where the Commission would--whether we should be releasing to the Commission, the reports.

CHAYTOR, Q.C.:

Q. So it's not that as acting CEO or interim CEO, it's not that you didn't think--did you think you had the right to read the reports?

MS. JONES:

A. I hadn't even given it any process at the point in time, remembering I came into this particular job with Burin radiology, as well as getting ready for Commission of Inquiry, as well as everything else that was on the desk, so it would have been even two weeks or more before I would have gotten down to knowing all of the bits and pieces and really, you were triaging on a daily basis with respect to what

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I needed to deal with today, what I needed to deal with--and so it was only when I got to the full scope of what was going on in the office, after I had set up a structure to prepare us for the inquiry, to meet with the solicitors, all of those kinds of things, that the technical parts of all of this would have come into my head about what was going on with ER/PR, where it was, because as you've heard me say, there was very little intimate knowledge about that whole issue and at that point in time, we already had the discussion going on and it's towards the latter part of July where peer review was coming up with respect to what was our position, as Eastern Health, going to be with respect to the peer review reports.

CHAYTOR, Q.C.:

Q. Okay, I just want to be clear because I understand then, I'm going to ask you what you understood the status of the ER/PR issue to be when you assumed the role.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

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Q. But on this particular issue about you are now the CEO and you find this on the desk of the CEO.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So obviously your predecessor had these documents in his possession.

MS. JONES:

A. Uh-hm.

CHAYTOR, Q.C.:

Q. What was your understanding as to your entitlement to have these documents and be able to read these documents?

MS. JONES:

A. And honestly if I was to process it, I would have said that this was between the leadership teams, okay, and Dr. Williams or Dr. Howell in terms of moving forward, because that is why, that's the whole idea of peer review and inside the quality committee of the organization, so they're protected under the Evidence Act. So that would have been my initial processing, until I had time to sit down and see just exactly where we go. I had

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been involved in peer review in the past and in my role as COO would have been part of the leadership team, that it would have been responsible and been able to see what was inside of peer review as part of that leadership team.

CHAYTOR, Q.C.:

Q. Yes, and peer review involving particularly named doctors or professionals?

MS. JONES:

A. Yes, absolutely.

CHAYTOR, Q.C.:

Q. Okay, and I take it we don't see that in these reports?

MS. JONES:

A. No, not in particular individuals.

CHAYTOR, Q.C.:

Q. So you gave it to Ms. Penney and she filed it away and then sometime down the road, you--these are the copies that you actually read?

MS. JONES:

A. Those were the copies that I initially read, yes.

CHAYTOR, Q.C.:

Q. So you went back to Ms. Penney and asked her

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to retrieve the file?
MS. JONES:
A. Retrieve them, I needed to see what was in them, we had to make a decision with respect to the Commission of Inquiry.
CHAYTOR, Q.C.:
Q. Whether to disclose them through this process.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Yes. Did Mr. Thompson ever request copies of the reports?
MS. JONES:
A. Mr. Thompson requested findings of recommendations of peer review. There was a listing of information that through July or into early August he had asked, as they were preparing the department for the Commission, for a list of, there's maybe 18 things and peer review, findings of recommendations of peer review conducted in 2005 were there on that list and the discussion I had with -
CHAYTOR, Q.C.:
Q. I'm sorry, could you tell me that again? Which document are you referring to?

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MS. JONES:
A. It's just a list of required documents that the department was looking for, that we've co-ordinated through Mr. Simmons in terms of moving those through to the department.
CHAYTOR, Q.C.:
Q. So that's your own document that you created based on -
MS. JONES:
A. This was a document that Robert Thompson had and asked us to--and it had everything from job descriptions on it to a DAKO and Ventana operating manuals, to findings of recommendations of peer review conducted in 2005. And I clearly said to him at the time that they were peer review documents and that they would not be moving forward.
THE COMMISSIONER:
Q. Just to make it clear, Mr. Thompson, for whatever reason, sent you a shopping list, as it were, of things that he wanted from the organization.
MS. JONES:
A. Eastern Health, that's right.
THE COMMISSIONER:

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Q. And you were prepared to give him 17 of those things and not the 18th?
MS. JONES:
A. Very clearly I talked to Robert and I was not prepared to give him the peer review recommendations because I was still under the impression of peer review and that therefore, they should not be shared outside of the structures inside of which they were protected.
CHAYTOR, Q.C.:
Q. What's the date of the document? I don't have that document?
MS. JONES:
A. There is no date on the document, but that would have been sometime in August or so, July, August.
CHAYTOR, Q.C.:
Q. August of 2007?
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. And Mr. Thompson forwarded this to you?
MS. JONES:
A. Yes, that was a list of documents and I'm

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thinking that Mr. Simmons also had, but we would have shared with him the types of information that the department was looking for.
CHAYTOR, Q.C.:
Q. Okay, and what is it exactly with respect to the peer review documents that Mr. Thompson asked to be provided?
MS. JONES:
A. He's asking for findings and recommendations of the peer review conducted in 2005.
CHAYTOR, Q.C.:
Q. Okay, so he's asking for the findings and the recommendations?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And what was your response to Mr. Thompson?
MS. JONES:
A. And my response was because they are a peer review, that we wouldn't be providing them and that we were working through a process around what response we were going to work through for the Commission and once I had had some legal advice, then as we move forward, we

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would discuss them.
CHAYTOR, Q.C.:
Q. And did you communicate that directly back to Mr. Thompson?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. Was there e-mails back?
MS. JONES:
A. No, they would have probably been verbal conversation.
CHAYTOR, Q.C.:
Q. Verbal conversations. And at that point in time, did you inform him that Mr. Tilley had been prepared to give the documents to Mr. Abbott?
MS. JONES:
A. No, I didn't.
CHAYTOR, Q.C.:
Q. Okay, and why not?
MS. JONES:
A. Because this says "never sent" so I'm not sure what the conversation between Mr. Abbott and Mr. Tilley--there is obviously a reason why Mr. Tilley didn't send that document.

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CHAYTOR, Q.C.:
Q. Yes, and I think Mr. Tilley's answer to that was because Mr. Abbott wasn't there to send it to.
MS. JONES:
A. Well that could very well be.
CHAYTOR, Q.C.:
Q. If I recall Mr. Tilley's evidence on it.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So when Mr. Thompson comes looking for it, less than two months later -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. You make a different decision than Mr. Tilley made.
MS. JONES:
A. Absolutely.
CHAYTOR, Q.C.:
Q. And the reason for that was what?
MS. JONES:
A. Because my full belief was, in terms of the issue of these were peer review documents,

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that is what we had been talked--that had been talked about inside the organization for the entire two years. There's also much discussion within the medical staff, as well as the organization, not just over these documents, but any reviews that were like that to be protected under peer review and underneath the Evidence Act. So really having a set of documents that individuals and physicians and staff believe were protected, it really would be breaking their confidence.
CHAYTOR, Q.C.:
Q. You had read the documents by this point in time?
MS. JONES:
A. By that time I had read them, I knew what was in them.
CHAYTOR, Q.C.:
Q. Okay, and you knew what wasn't in them as well.
MS. JONES:
A. And I knew what wasn't in them.
CHAYTOR, Q.C.:
Q. Including no reference to individual names?
MS. JONES:

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A. Yes. And I think you also need to understand that in terms of the Evidence Act, we were also very clear that it didn't have to be individual peer review, quality assurance activities are protected under the Act, just like incident reports and even our policies today talk about incident occurrence reporting being protected underneath the Evidence Act.
CHAYTOR, Q.C.:
Q. This letter that Mr. Tilley had drafted says that "they were prepared as a peer review request and to that extent, we have performed it under our quality umbrella to ensure its protection from future release." Is that why these documents were classified in that manner?
MS. JONES:
A. I have no idea because I wasn't in in any of the initial discussions around bringing in external review individuals. We often set up peer review, whether it's on an individual basis, usually and we do set it up in a fashion underneath the Evidence Act.
CHAYTOR, Q.C.:
Q. And Ms. Jones, were you aware that--and I

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think it may have actually been the day after this, May 31st, 2007, certainly late May, that the recommendations had been provided to the department or a spreadsheet with the recommendations?

MS. JONES:

A. No, I wouldn't have.

CHAYTOR, Q.C.:

Q. Nobody told you that?

MS. JONES:

A. Nobody told me that and if that was so, I'm surprised to see that they were on the list that Mr. Thompson had, because if they were in the department, he would have had -

CHAYTOR, Q.C.:

Q. He may have been looking for an updated list, I think the list that was sent to him was about a year old.

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. So, what were you told was the status of the ER/PR issue when you assumed this position?

MS. JONES:

A. That we had been doing a--working on the

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recommendations inside of the individual peer reviews, that we had restarted testing inside St. John's in the winter of 2007. That we were continuing to work on any of the recommendations that were still left outstanding.

CHAYTOR, Q.C.:

Q. So, you understood that there were recommendations yet to be implemented?

MS. JONES:

A. Yes, being small parts, maybe policy areas that had not actually been totally signed off.

CHAYTOR, Q.C.:

Q. And who did you meet with to get a briefing on the issue?

MS. JONES:

A. It would have been Oscar Howell at the time because the lab reported into Dr. Howell. The other thing that I would have done at that point in time is because we were getting ready for--we knew that the Commission of Inquiry had been named and we needed to prepare the organization for it. We did some executive restructuring that moved Ms. Pilgrim in a lead role to prepare for the Commission versus the

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ER/PR. So that was part of us moving forward to get ready for coming into the Commission of Inquiry.

CHAYTOR, Q.C.:

Q. Where did you understand the disclosure piece was by the time you took over?

MS. JONES:

A. In what sense?

CHAYTOR, Q.C.:

Q. July, 2007. In terms of contact with the patients, did you understand they had all been identified and contacted?

MS. JONES:

A. There had been lots of discussion around and even as we were going in through, before I came on, it would always be said that, "Yes, we have contacted all of the patients" and then there would be somebody who had come forward in the medial that say "I had not been contacted." So and every time we had gone and looked at that, there was--there always was an issue. Either it had been a patient who had not been identified to be sent for retesting or a patient that--and it wasn't generally a patient that had not been contacted with the

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results follow-up, but it was generally, you know, patients who had not been sent forward.

CHAYTOR, Q.C.:

Q. Okay. So you were aware of that issue even before you became CEO, that there were patients coming forward, that Eastern Health was saying they're all contacted?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And then patients would come forward. And so where was that being discussed, at what level?

MS. JONES:

A. That was being discussed really at the inside of the quality and because normally the contact call would come in through either the cancer program or in through the quality in terms of the hotline.

CHAYTOR, Q.C.:

Q. But who was telling this to you at the executive level?

MS. JONES:

A. It would be Mrs. Pilgrim, because it was on patient contact and that kind of notification process.

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CHAYTOR, Q.C.:
Q. And so when the patient would come forward or there'd be notification from a patient that there hadn't been contact, that would be looked into and it would be determined that, yes, the patient hadn't been contacted?
MS. JONES:
A. Yes. Or in sometimes we were hearing and they have been contacted and we could have identified the date or the time. Or sometimes it was that the patient had never been identified. And we had a number of instances, particularly into the fall of 2005, where patients were not originally identified, and the minister would have talked about those in a November press conference that there were parts of this province that were continuing to send in slides that needed to be sent to Mount Sinai.
CHAYTOR, Q.C.:
Q. Um-hm. And did--at any point was there discussion about continuing to go out with the same message, that everybody had been contacted?
MS. JONES:

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A. The board was very clear that, you know, our using of the word "all" was very problematic because every time we used all, there was somebody else who came forward. But in the context of talking to the people who were responsible for that, they would definitely say that they had made the contact. We now know that that is different, as the database that NLCHI has actually put together. They took over that in July when I came on. That process was already in place about building a definitive database, including the contact piece.
CHAYTOR, Q.C.:
Q. Okay. So it was certainly the subject of discussion at the board and the board was concerned about the use of the word "all"?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Was it also a subject of discussion around executive management?
MS. JONES:
A. Executive table, absolutely.
CHAYTOR, Q.C.:

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Q. Okay. And is it that they were then reassurances from the people making the contacts that everyone has now been contacted, is that why -
MS. JONES:
A. We very clearly claimed to the decision that we would--like, at the end of the day the way that this database was developed and was looking, that could we ever say that they were all.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. Because there was--it was not just Eastern Health, it was all of the other regional health authorities that had to search their own paper trails and that, and that there was no way that we would have that full assurance. The Newfoundland and Labrador Centre for Health Information that was commissioned to develop the database, that was part of their, one of their mandates was to insure that or to search to the best of their ability to insure that we had all of the individuals in the province.

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CHAYTOR, Q.C.:
Q. I just want to back up to the piece where the assurances were still going out that all the patients had been contacted and that happened on more than one occasion. And Minister Wiseman has said that he was relying on information, as well, from Eastern Health in his assertions in that regard. So at some point is it at the board level that a conscious decision is made to be careful, don't be saying they're all contacted, there are some that we don't even have any control over or knowledge as to whether or not they're contacted?
MS. JONES:
A. And I think that that would have been jointly, because we would have been saying there's no way that we have that confidence in this database because we cannot, we can't assure ourselves that we could get at everything for a ten-year period of time.
CHAYTOR, Q.C.:
Q. And when did that lack of confidence happen?
MS. JONES:
A. I think that that happened long before Mr.

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Tilley left.
CHAYTOR, Q.C.:
Q. Okay. So that's long before Mr. Tilley left?
MS. JONES:
A. Yeah, in, you know, as we came up through and every time there would be some other disclosure in the public coming forward, they would say "How can that happen?" And when you chase back, it wasn't in the original database, you were back into original reports, maybe it was one of the regional health authorities in their original review of the reports didn't send forward that particular patient, didn't identify them as part of the retesting set of individuals.
CHAYTOR, Q.C.:
Q. So that discussion and the lack of confidence in the database that had been put together by Eastern Health, that happened long before Mr. Tilley left?
MS. JONES:
A. Absolutely.
CHAYTOR, Q.C.:
Q. And what do you mean by "long before", how many -

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MS. JONES:
A. Probably in the two months before. We ran into--I know before I came on on the 9th of July there was discussion around Eastern Health trying to go back and recreate what had been done. And that was to develop a consolidated or a single database that would have all of the clients that were identified that we could, as well as all of the contacts to put it in a single source. I think you will hear clearly from many individuals that we had a list of 939 that were identified in the lab, is what the lab had identified. And then we had another list, a contact list in terms of what information or who had contacted patients, how many patients were panelled, how we had sent out to the different regional health authorities who assisted us in contacting individual patients. So there was clearly a need to put that into a single database and to sign down and make sure all of the components were locked. When I came into the role, Mr. Tilley and Mr. Thompson had already had discussions about that and it was clear that there would have been no confidence

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in Eastern Health developing that database and that we needed an external third party to develop that database and that's where the NLCHI came in. And so there was a contract or a mandate or whatever between the government, and what we clearly said at the time was that we will, they--NLCHI couldn't do their work without the assistance of Eastern Health and we were clearly needing to develop many of the same things that NLCHI was going to develop, so we would work in concert and at the end of that then whatever NLCHI was able to determine, that that database would be available for Eastern, to Eastern Health to be able to move forward and do other things with it. But it was clearly a database that would identify all of the ER/PR negative as well as the contacts. So there was two components of that that should have been complete.
CHAYTOR, Q.C.:
Q. Right. So and the lack of confidence in Eastern Health's own work on that piece -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:

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Q. That had happened a couple of months, you're saying, before Mr. Tilley left?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So that's back in May of 2007?
MS. JONES:
A. May, into June of 2005, for sure. So it was -
CHAYTOR, Q.C.:
Q. 2007?
MS. JONES:
A. 2007, sorry about that.
CHAYTOR, Q.C.:
Q. All right. So it's--and do you know whether or not that lack of confidence was ever communicated to the Department of Health prior to now the discussion later on when -
MS. JONES:
A. I think -
CHAYTOR, Q.C.:
Q. - you're into putting together NLCHI's database?
MS. JONES:
A. I think that that was a discussion, and I don't know, you'll have to ask Mr. Tilley

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about that, that as we were going to go down the road of developing or attempting to come at this from a different way, then there was the discussion. So you'll have to talk to Robert Thompson and to Mr. Tilley about that particular conversation. When I came in on the 9th of July, I actually had my first meeting with Robert Thompson on the 19th and that was one of the issues that we did discuss. Because the individuals inside my organization were carrying on a full-time role running the lab or doing the quality or whatever and they--the NLCHI, as I said, couldn't do the work without them, so this was after hours, evenings, weekends, so they were carrying a regular workload as well as this. And we had discussions about how can we streamline this so that you get what you need and that we are able to at the end of the day be confident and to be able to take that database and move forward.

CHAYTOR, Q.C.:

Q. Right, okay. So and you're thinking when you come into this job on July 9th the lack of confidence in your own organization for your

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database had been going on for a couple of months?

MS. JONES:

A. Had been going on for awhile. Whether it was a couple of months or not is another story.

CHAYTOR, Q.C.:

Q. And when that may have been communicated to the department, you don't know?

MS. JONES:

A. And I think that it may have come the other way. You're making an assumption that we communicated with that with the department. I think that that may very well have been a discussion about the feeling about Eastern Health's ability to be able to develop a database given the experience of Burin.

CHAYTOR, Q.C.:

Q. So the department, in fact--yeah. So you're suggesting the department was -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - the precipitator of that in saying that, well, perhaps you don't know for sure?

MS. JONES:

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A. And I would say to you that that was a discussion that I would have had with the department and it was not one that I would have said, "Look, if we're going to go down this road, I don't want two sets of people out there developing a database because what does that mean. Let's let this Newfoundland and Labrador Centre for Health Information has this expertise in database management and building databases, so thank you, very much, let's use them" and then take that and work it with what we needed it inside Eastern Health.

CHAYTOR, Q.C.:

Q. Okay, right.

MS. JONES:

A. So it wasn't something that I was going to fight the department on.

CHAYTOR, Q.C.:

Q. No, no, no, I'm not suggesting. My question is more geared towards if we're into May, 2007 and Eastern Health has recognized that there's some issue or lack of confidence themselves in their work on this piece, when Eastern Health may have communicated that to the department.

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And what you're saying is that that probably didn't get communicated from Eastern Health, but the department came to the realization itself -

MS. JONES:

A. That it needed to develop it.

CHAYTOR, Q.C.:

Q. That there should be a lack of confidence, is that--that's your answer?

MS. JONES:

A. Yeah, that would be my answer.

CHAYTOR, Q.C.:

Q. That's your answer, okay. When you became CEO, did you make any changes in terms of the management of the ER/PR issue?

MS. JONES:

A. What we did is we did some organizational restructuring so that we would have a senior executive responsible for that particular aspect, remembering that the ER/PR technical issues in terms of the reports were well under way and, you know, the move forward in the lab had already restarted testing and that. So on the other side it was what were the other things that we needed to do to prepare

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ourselves for the Inquiry and anything else that needed to be done. So Mrs. Pat Pilgrim took over that role and there were some of her clinical roles that we moved to other COOs so we could free her up to be able to do that particular piece of work and to take the lead in that. She would have been called the executive lead.

CHAYTOR, Q.C.:

Q. Okay. And if we could go back, please, there were a couple of other executive management meetings that you would have been involved in before you took over the role.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. 0774, please, Registrar? And this is an executive management meeting of November 21st, 2006?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And you are present?

MS. JONES:

A. Um.

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CHAYTOR, Q.C.:

Q. And Mr. Tilley is the chairperson?

MS. JONES:

A. Um.

CHAYTOR, Q.C.:

Q. Ah, you're present twice, apparently. Your name appears twice.

MS. JONES:

A. Okay.

CHAYTOR, Q.C.:

Q. Probably comes in handy some days, I would think. And the usual people are in attendance and now Dr. Oscar Howell, of course, is in the position of VP medical?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And this, if you--this is a fairly lengthy report on the ER/PR issue on this date?

MS. JONES:

A. Yes. Just to the top, what day is it?

CHAYTOR, Q.C.:

Q. Sorry. This is November 21st, 2006.

MS. JONES:

A. Okay. Just before they did the December -

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CHAYTOR, Q.C.:

Q. Yes, just before the December briefing.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And Mr. Tilley welcomed Dr. Denic and his team who were there, which included Dr. Cook, Dr. Elms and also Kara Laing is present and Dan Boone is also present.

MS. JONES:

A. Um.

CHAYTOR, Q.C.:

Q. And Terry Gulliver and Heather Predham are also?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So they're all guests for the ER/PR presentation?

MS. JONES:

A. Yeah.

CHAYTOR, Q.C.:

Q. Do you recall this, do you recall this meeting?

MS. JONES:

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A. I recall some of the meeting because there was a fair amount of discussion around some of the technical aspects in terms of the presentation. And I do remember us saying we probably are aware of that, let's go down through the entire presentation, what we're talking about, so going back to ER/PR, what is Tamoxifen, all of those kinds of things.

CHAYTOR, Q.C.:

Q. And so who--we see that Dr. Denic, obviously did some presentation and Dr. -

MS. JONES:

A. And Dr. Laing.

CHAYTOR, Q.C.:

Q. - Kara Laing?

MS. JONES:

A. Yes, that's right.

CHAYTOR, Q.C.:

Q. Did anyone else speak?

MS. JONES:

A. I don't remember Ford Elms speaking, but that's not to say that Ford wouldn't have. I would have expected Don Cook to have commentary, as well. And if--can you just roll down?

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CHAYTOR, Q.C.:
Q. Sure. And you have control, too, if you wish.
MS. JONES:
A. Okay.
CHAYTOR, Q.C.:
Q. To scroll down.
MS. JONES:
A. Talked about no national.
CHAYTOR, Q.C.:
Q. I see Dr. Howell's name in follow up on a few items.
MS. JONES:
A. Yeah, yeah.
CHAYTOR, Q.C.:
Q. So the presentation, I take it, was by Dr. Denic?
MS. JONES:
A. Yes, and Kara Laing.
CHAYTOR, Q.C.:
Q. And Kara Laing?
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:

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A. And I do remember Kara talking a fair bit about epidemiology and Tamoxifen and adjunct (sic.) therapy and all those kinds of things.
CHAYTOR, Q.C.:
Q. Okay. So in Dr. Denic's presentation it says "Focused on the reliability of the testing."
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. "And the variables that influence the results."?
MS. JONES:
A. Yes. And you have this issue of DAKO and Ventana again.
CHAYTOR, Q.C.:
Q. Yes. "Discussion focused on documentation, standardized procedures, semi-automatic systems versus the new Ventana system."
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. So that was still discussed as an issue?
MS. JONES:
A. Absolutely.
CHAYTOR, Q.C.:

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Q. Do you recall what was the issue between the semi-automatic and the new Ventana, what was discussed?
MS. JONES:
A. The issue is more that with the semi-automatic you would have had lots of more interaction with the individual technologist, okay, in preparing the slides. And they had--the boiling of the tissue, we talked a lot about boiling of tissue and whether, in fact, for the exact period of time and those kinds of things. So with moving to a more automated system, it would be a more precise than was with the DAKO system.
CHAYTOR, Q.C.:
Q. Okay. And "Discussion focused on documentation, standardized procedures."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And what was the focus of that?
MS. JONES:
A. I can't tell you what the exact focus of that would have been.
CHAYTOR, Q.C.:

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Q. Was there anything -
MS. JONES:
A. Probably related to, you know, we carried out this procedure and we carried it out, but did we have the documentation to say exactly three minutes, five minutes, two minutes, whatever, what was the temperate of, all of those kinds of things. So it was more on did we actually document versus did we do it.
CHAYTOR, Q.C.:
Q. And the standardized procedures, did that involve the standardized procedures in the lab itself, the technologists, the pathologists, who -
MS. JONES:
A. I have no--I can't speak to that.
CHAYTOR, Q.C.:
Q. Did it--was the issue of fixation mentioned?
MS. JONES:
A. Not sure.
CHAYTOR, Q.C.:
Q. Was that something you think you would recall if fixation came up, given your previous involvement?
MS. JONES:

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A. Not in the nature of this discussion because this was in discussion of talking about a technical briefing for the media and moving forward with that.
CHAYTOR, Q.C.:
Q. Okay. So the purpose of doing this -
MS. JONES:
A. Was to bring executive in line with where they were.
CHAYTOR, Q.C.:
Q. What's going to happen at the media briefing?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Okay. So this was to be the same presentation that would happen with the media?
MS. JONES:
A. That was--would have been my understanding.
CHAYTOR, Q.C.:
Q. That was your understanding.
MS. JONES:
A. It was we will have had this and so that you're aware of what would be part of that technical briefing.
CHAYTOR, Q.C.:

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Q. Why is Dan Boone present?
MS. JONES:
A. I can't speak to why Dr. Howell would have wanted him present, but it could have been anything, it could have been ER/PR lawsuit, who knows.
CHAYTOR, Q.C.:
Q. So he would have been there at the request of Dr. Howell?
MS. JONES:
A. I would think.
CHAYTOR, Q.C.:
Q. In Dr. Denic's presentation on the variables that influenced the results and the discussion focusing on those things that we just noted, was there any discussion at all on any of the work of the pathologists?
MS. JONES:
A. Probably--you know, what I would have known that Dr. Denic would have talked about is the development of the breast pathology group.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. And that and I would have known that there was

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additional education. But whether it was inside of the context of this particular presentation, I'm not sure.
CHAYTOR, Q.C.:
Q. So you don't know if that was discussed here or not?
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. And where would you have learned it otherwise?
MS. JONES:
A. Well, only because as we're moving forward with the recommendations and we had stopped doing this, this is a year later, that there was lots of activity going on around documentation and education.
CHAYTOR, Q.C.:
Q. There was lots of activity going on around documentation and education?
MS. JONES:
A. In terms of policies, procedures, making sure, those kinds of things, right.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:

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A. Those would have been just generic comments that would have been made.
CHAYTOR, Q.C.:
Q. So new policies and procedures regarding -
MS. JONES:
A. Were in place. We were getting almost ready at this point in time to restart up.
CHAYTOR, Q.C.:
Q. Okay. I just want to back up.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. So there were new policies and procedures brought in in terms of education?
MS. JONES:
A. No, no, in terms of policies and procedures for the testing.
CHAYTOR, Q.C.:
Q. For the testing itself?
MS. JONES:
A. Right.
CHAYTOR, Q.C.:
Q. There were new policies and procedures?
MS. JONES:
A. Yes. And we were -

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CHAYTOR, Q.C.:
Q. Well, we've certainly seen the fixation policy, which is -
MS. JONES:
A. Yeah. And at the end of -
CHAYTOR, Q.C.:
Q. Which doesn't appear to be adopted yet.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. But what about what other policies and procedures were brought in?
MS. JONES:
A. We wouldn't have seen those in and they probably would not have ever been included in the detail here, only that work was done.
CHAYTOR, Q.C.:
Q. I'm sorry, the policies and procedures?
MS. JONES:
A. For the testing -
CHAYTOR, Q.C.:
Q. There were new policies and procedures brought in to play in terms of how to carry out the ER/PR testing?
MS. JONES:

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A. That's right.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:
A. And that was a lot of the work that really before we ever restarted that those were the kinds of things that from a formalization perspective, formalizing what we already did or looking at best practice, right.
CHAYTOR, Q.C.:
Q. And so those new policies and procedures would have been brought in then prior to this date, November, 2006?
MS. JONES:
A. I'm sure they were being worked on, but I can't speak to that because I wasn't involved in that.
CHAYTOR, Q.C.:
Q. And would they have come through to executive for you to have -
MS. JONES:
A. No.
CHAYTOR, Q.C.:
Q. - knowledge of them?
MS. JONES:

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A. No.
CHAYTOR, Q.C.:
Q. How would you have knowledge of that?
MS. JONES:
A. Only in general conversation about how close we were ready to start retesting inside of Eastern Health again.
CHAYTOR, Q.C.:
Q. And who would be providing you with the information?
MS. JONES:
A. That would have been, at this point in time it would have been Dr. Howell, because he would have -
CHAYTOR, Q.C.:
Q. Through executive management?
MS. JONES:
A. Through the executive management, where we were on the point.
CHAYTOR, Q.C.:
Q. And he would have told about policies and procedures that have come -
MS. JONES:
A. Not specifically but just saying the recommendations are--we're almost ready to

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restart, so those recommendations -
CHAYTOR, Q.C.:
Q. Did the executive management ever see these spreadsheet of recommendations?
MS. JONES:
A. I've seen it now, but at what point in time we would have seen it, I can't--I can't even think about really where that would have been.
CHAYTOR, Q.C.:
Q. And then Kara Laing's presentation focused on epidemiology, adjuvant therapy and metastatic, sorry, cancer.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. Hormone receptors, the evolution of endo -
MS. JONES:
A. Endocrine therapies.
CHAYTOR, Q.C.:
Q. Thank you. And impact on clinical management?
MS. JONES:
A. Um.
CHAYTOR, Q.C.:
Q. And "The tumor group, breast disease group continues to review and monitor ER/PR and Her-

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2-neu"?
MS. JONES:
A. Um.
CHAYTOR, Q.C.:
Q. Now this is in November, 2006?
MS. JONES:
A. 2006.
CHAYTOR, Q.C.:
Q. So what ER/PR and her-2-neu would that group be monitoring?
MS. JONES:
A. Well, it says here "The tumor, breast group continues to review and monitor ER/PR and her-2." We were not doing her-2, right.
CHAYTOR, Q.C.:
Q. Nor were you doing ER/PR -
MS. JONES:
A. ER/PR, so the results that were coming back, I would expect, were being because those results then were going into pathology reports that were being distributed throughout the organization. So this tumor, breast group was a specialty group that had developed.
CHAYTOR, Q.C.:
Q. So this tumor group, breast group are

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monitoring, reviewing and monitoring--your understanding of this was that this is the retests?
MS. JONES:
A. No, but the tumor group and breast disease group, there's pathologists as well as oncologists.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. Coming together to look at ER/PR, her-2 and the implications.
CHAYTOR, Q.C.:
Q. Okay. So it's the issue as opposed to the test?
MS. JONES:
A. Issue.
CHAYTOR, Q.C.:
Q. Okay. "From all indications the level of confidence from the oncologists in the laboratory testing is better than it was previously."
MS. JONES:
A. Um.
CHAYTOR, Q.C.:

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Q. And "The following points then were raised during the presentation." First, "The organization cannot speak publicly on the findings and recommendations of the review because there is currently a class action lawsuit ongoing. This information is protected under the Evidence Act. Discussion ensued regarding the need to share the experience with the other pathologists within the province." And then "Dr. Howell and Dan Boone are to discuss further to making any discussion," think something wrong in that sentence.
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. "Making any discussion to discuss the reviewers' report with the provincial pathologists."
MS. JONES:
A. "Provincial pathologists."
CHAYTOR, Q.C.:
Q. So I take it Dr. Howell and Dan Boone are tasked with going away to discuss the reviewers' reports, being Dr. Banerjee and

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Trish Wegrynowski?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And so they're going away to discuss further prior to any disclosure of that information to the other pathologists?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. Is that right?
MS. JONES:
A. Yes, that's what that looks like it appears to reflect.
CHAYTOR, Q.C.:
Q. So what does "The organization cannot speak publicly on the findings and recommendations because there is currently a class action lawsuit going on."?
MS. JONES:
A. I would take that more to be the findings and recommendations because the information is protected under the Evidence Act. I'm not sure whether that was captured the way it was said. And if you go on further, it says that

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"Dr. Howell and Boone will discuss if there's any way of making those recommendations available," because we would have had pathologists throughout the entire province at the point in time when we started back testing or doing the technical aspect of the ER/PR needing to understand what had happened, if that was possible, to be able to explain it to them so that they would then come back to start using the slides. So there had to be confidence in the system around that.

CHAYTOR, Q.C.:

Q. Oh, absolutely. And do I understand from this that the information of the reviewers, Dr. Banerjee and Trish Wegrynowski, as to any issues that needed to be addressed, that had not been shared with the other pathologists in the province up to this point in time?

MS. JONES:

A. I would think that you're right on that assumption.

CHAYTOR, Q.C.:

Q. And this is over a year later?

MS. JONES:

A. That's right. Because there's no testing

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going on at this point in time. All of the tests are being sent out of the province. And at the point in time when we needed to--when we were ready to restart testing inside of Eastern Health, then there would need to be assurance given to the province that that testing was, you know, best practice.

CHAYTOR, Q.C.:

Q. There's no testing going on in St. John's, but obviously everybody's sending their samples to Mount Sinai -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. - or wherever to be tested. What about the fixation issue? I mean, fixation is still an issue and that's still happening in all the centres across the province. Have that issue been communicated?

MS. JONES:

A. That issue, I think you will see correspondence from Dr. Cook, which would have been original, that would have been talking

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about fixation in the earlier fashion.

CHAYTOR, Q.C.:

Q. So the finding regarding fixation had been communicated by Dr. Cook to the other pathologists?

MS. JONES:

A. Well, it was inside of Eastern Health, right, so really Dr. Cook will have to determine that and those particular tests were being read by Mount Sinai, so whether there was correspondence from Mount Sinai to the individual referring organization or not, I'm not sure. But there is at least a couple of occasions where fixation in the history of this issue has been talked about with the other regional health authorities.

CHAYTOR, Q.C.:

Q. Okay, and is that prior to this date, November of 2006?

MS. JONES:

A. Oh yes, yeah.

CHAYTOR, Q.C.:

Q. So they were made aware of the issue?

MS. JONES:

A. Yeah, and I only know that because in

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reviewing all of the documents, you would see some of the level, not related to the 2005, not related here to 2005 that fixation is an issue.

CHAYTOR, Q.C.:

Q. So in reviewing the documents, you're aware that there was communication or there are documentation--there's documentation to show that Dr. Cook communicated the fixation issue with the other regions?

MS. JONES:

A. No, I said I am aware -

CHAYTOR, Q.C.:

Q. Internally within Eastern Health.

MS. JONES:

A. Internally within Eastern Health, and there are other--there is other documentation by other pathologists earlier, prior to 2005, that talks about fixation.

CHAYTOR, Q.C.:

Q. Okay, I want to be clear on that.

COFFEY, Q.C.:

Q. Ejeckam.

CHAYTOR, Q.C.:

Q. That's Dr. Ejeckam you mean?

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MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. In 2003.
MS. JONES:
A. Yes, and earlier than that.
CHAYTOR, Q.C.:
Q. And earlier again?
MS. JONES:
A. I'm thinking that there was something earlier as well.
CHAYTOR, Q.C.:
Q. Even before Dr. Ejeckam -
MS. JONES:
A. Yeah.
CHAYTOR, Q.C.:
Q. - identifying fixation as an issue?
MS. JONES:
A. Well, fixation in 2003, but you will have documents that -
CHAYTOR, Q.C.:
Q. We do have, certainly, Dr. Ejeckam's and we do have some documentation from Dr. Khalifa. Would that be what you're thinking of?
MS. JONES:

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A. I'm thinking, yes, those were the two that I would remember.
CHAYTOR, Q.C.:
Q. Okay, which is -
MS. JONES:
A. But I wouldn't have known that only from going back through the documents as in this role.
CHAYTOR, Q.C.:
Q. But in terms of it remaining an issue in 2005 when Dr. Banerjee and Trish Wegrynowski are into Eastern Health, and anything Dr. Banerjee and Trish Wegrynowski may have identified in terms of the fixation issue, up to this point in time, November 2006, to your knowledge had that been conveyed to the other pathologists?
MS. JONES:
A. You'll have to ask Dr. Cook on that one, or even Dr.--in November 2006, it could have been Williams or Howell who would have been dealing with the others.
CHAYTOR, Q.C.:
Q. And because the discussion at this point is regarding the need to share the experience with the other pathologists within the province?

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MS. JONES:
A. Which is--yeah.
CHAYTOR, Q.C.:
Q. Yes, okay, and for patient safety, that would be a good thing. Okay, "there is no national laboratory accreditation process for immunohistochemical laboratories. Ontario and the western provinces have provincial accreditation programs. However, the Atlantic Provinces do not. Prior to 1995, the laboratory was accredited under the broad blanket of CCHSA accreditation. Participation in an accreditation program is a high priority on all levels and Dr. Howell is to inquire further."
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. So the laboratory was accredited prior to 1995?
MS. JONES:
A. I can't answer that question, but we did never have lab accreditation in this province like you would see in some of the other provinces. Canadian Council of Health Service

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accreditation would have had a lab in a generic sense, in terms of a lab team and probably been accredited, just like diagnostic imaging, but really you would have to go back to the standards for accreditation for the Canadian Council of Health Services accreditation to look at the depth of that.
CHAYTOR, Q.C.:
Q. Now I've seen in the documentation where you have been responsible for accreditation at different points in time, where you have been one of the leaders involved.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. But you don't know anything about the lab being accredited prior to 1995?
MS. JONES:
A. No. No, and it would not have been accredited--it would only have been accredited if in fact there was CCHSA had specific standards for lab pre-1995, that it would have been accredited just like surgery program or just like any other part of the hospital system, and I am an accreditor with Canadian

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Council of Health Services Accreditation since 1990, but the level of direct discipline specific accreditation would not be inside of Canadian Council of Health Service Accreditation. You really need to go to specialty accreditation for that.

CHAYTOR, Q.C.:

Q. Okay, and I will address with you the accreditation which ultimately happens a year later.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Or thereabouts. Bullet number one, what was the outcome of that issue?

MS. JONES:

A. Bullet number one, which -

CHAYTOR, Q.C.:

Q. Bullet number one, Dr. Howell and Dan Boone were going away to further discuss prior to release or prior to the information from the reviewer's report being given to the other pathologists.

MS. JONES:

A. Yes.

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CHAYTOR, Q.C.:

Q. What happened to that issue?

MS. JONES:

A. I have no idea what would have happened with that.

CHAYTOR, Q.C.:

Q. Okay. Ms. Jones, the briefing on this day and the issue of the other pathologists in the other areas of the province not having certain information, did that cause you any concern?

MS. JONES:

A. I think that what--we clearly were not doing ER/PR testing at the time, so that would have been all of samples inside of this province were being sent to Mount Sinai. So at that point in time, I guess that would not have registered because there was nothing happening in this province, that we were actually referring out to a best practice lab.

CHAYTOR, Q.C.:

Q. So implicit in that is that prior to Eastern Health starting or commencing to do the testing again in February 2007, there would have to be the dissemination of knowledge to the other pathologists?

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MS. JONES:

A. We would have had to have some discussion with them to have assurance that our lab was producing reliable results and that they would have confidence in sending their samples to Eastern Health, yes.

CHAYTOR, Q.C.:

Q. Now you had been involved in the fixation issue back early on in September 2005. The fixation issue was brought to your attention.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. Were you concerned, in November 2006, bearing in mind that you're aware there was a fixation issue, were you concerned then that pathologists outside of the region may or may not know this?

MS. JONES:

A. Wouldn't have entered my mind because my responsibility was inside of Eastern Health and we had addressed that issue there in working through the issues that we had. So in terms of a provincial role or whether in fact I would have had a screen or a lenses that

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says "did this go outside?" that never entered my mind.

CHAYTOR, Q.C.:

Q. So in terms of the responsibility for people outside of--patients outside of Eastern Health, you didn't connect this?

MS. JONES:

A. No, that was not anything that I would have talked about or thought about at the time.

CHAYTOR, Q.C.:

Q. What about the idea of--this whole idea, and of course, we spent a couple of days last week talking about patient safety issues and, you know, disclosure issues. What about this whole concept of not sharing information from which there can be learnings, because there's some protection, legal protection to the information? Does that concern you?

MS. JONES:

A. No, that never ever concerned me, and I think if you look at the accreditation report in 2004 that Health Care Corp had, there's a reference in the accreditation report about us sharing issues and being one of the provincial--you know, one of the individuals

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or partners in the province that would share information for the betterment of the province. So that's actually recognized in a good practice in 2004.

CHAYTOR, Q.C.:

Q. So in terms of sharing information, so what you're saying is Eastern Health or the Health Care Corporation then erred on the side of providing information?

MS. JONES:

A. Well, there was a--there's a group provincially called--whether it's quality people, I'm not sure what the name would have been, but it would have been the quality people that had a working group and they would have shared information inside of that group around issues that they may have been exposed to or where there were best practices or those kinds of things. So there was a provincial group prior to restructuring in 2005 where there was a group of risk managers, quality leaders, whatever way it was couched at the time, underneath probably the Newfoundland and Labrador Health Board's Association where that sharing did take place.

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CHAYTOR, Q.C.:

Q. And does that--and so you're saying that you weren't concerned because you're assuming that communication was taking place at that level?

MS. JONES:

A. No, I'm not. I'm just saying that we were acknowledged in 2004 to be one of the leaders in ensuring that where there were issues in terms of that vehicle, that information was shared across in the province.

CHAYTOR, Q.C.:

Q. Yes, and was that continuing then in 2005 and 2006?

MS. JONES:

A. It did pick up again, but it may be in the restructuring, as new individuals were put in place inside of the new four regional health authorities, but that definitely is in place again at this point in time. How far back, you know, a year or absolutely more than that, it has been. So there was a period of time with the restructuring that that group did not meet, but it continues to meet now.

CHAYTOR, Q.C.:

Q. So you weren't concerned in 2004 because it seems that the organization was doing it right.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And putting the issues of sharing of best practices in the forefront.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And was that being done, notwithstanding any issue of privilege or protection to the information?

MS. JONES:

A. I think that when you talk about that, I'm not sure where that is, but there is always sharings that come out, and that they move forward. So there was no lens of legal, let's put it that way, that was put up there.

CHAYTOR, Q.C.:

Q. Yes, which is what I'm, you know, reading in this bullet, rightly or wrongly.

MS. JONES:

A. This is Evidence Act.

THE COMMISSIONER:

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Q. But are you saying that in spite of the Evidence Act, the information regarding what was happening in your lab would go to other labs?

MS. JONES:

A. General information would be shared.

THE COMMISSIONER:

Q. Well, what's general information as opposed to specific information?

MS. JONES:

A. Well, the issue around best practice.

THE COMMISSIONER:

Q. For example, fixation.

MS. JONES:

A. Issues around best practice, they don't necessarily have -

THE COMMISSIONER:

Q. Well, does that mean they would get the information regarding the problems with fixation, for example?

MS. JONES:

A. I can't speak to that particular one, but if you look at the literature in best practice and those kinds of things, that these groups would be coming together. The lab directors

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across the province would be meeting fairly regularly and those kinds of issues would be discussed.

THE COMMISSIONER:

Q. Well, can I conclude then, and just in terms of--because frankly, it bothers me a great deal and it came out in part of last week's, and that is the apparent conflict between the idea that patient safety demands that information be shared, not only patient safety within the institution in which the issue arises, but patient safety in other institutions. If this whole process has taught me anything, as I've been looking at the reports from around the world, it's how often the same problems keep occurring over and over and over and over again, and you got to say to yourself, doesn't anybody talk to anybody.

MS. JONES:

A. Yes.

THE COMMISSIONER:

Q. Now I mean prima facie, one of the problems is you have a system which says information shall not be shared, based on a legal system which

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has been in existence for a long period of time, but basically that says keep it to your vest, don't let it out, and you have a patient safety movement which says if we're going to get anywhere, we have to be transparent, which I take to mean you have to get information out there. Now if that information is going to be useful to other institutions, and I think here particularly of institutions who rely on Eastern Health for their testing, then I've got a real problem with how you can properly do that if you're not going to tell them the information that is in the two reports.

Now there are, I'm sure, ways around everything, but the question that then comes to my mind is if, in conversations, not recorded, in general discussions about laboratory safe practices, all of the information in Dr. Banerjee's report, for example, were conveyed to people around the rest of the province, those of you in the health industry might say "well, that's good because we've gotten all that information out there," but it seems then that the only people who don't know what was in the report are the

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people whose test results changed, and my question then becomes is that right either? So I really, really would be interested in knowing whether or not, in spite of the Evidence Act, in spite of the fact that these reports are four copies which don't go anywhere, except to four, perhaps five individuals within institution, all that information gets out there.

MS. JONES:

A. And I think that what you would need to understand in the way that we work is the actual report is protected and that in discussions around various issues that in fact best practice, we do talk about best practice, and what should be done in the various groups, that in this province there is a mandatory reporting, like there are in some of the provinces, around occurrence reporting that then goes forward, but vehicles such as the quality and safety leaders that come together on a provincial basis do share across those vehicles and in vehicles such as, just exactly like you have said, in terms of the VPs of medicine or those responsible for lab come

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together and there is discussion in those vehicles around our learnings.

Your comment about whether in fact, you know, it goes to the public, I really have--I can't answer that particular comment, but there's sharing of learnings.

THE COMMISSIONER:

Q. Well, it just seems to me it's an argument about having your cake and eating it too, in the sense of if this is truly privileged, based on a logic which in its infancy was designed for patient safety actually, then what I'm hearing, and perhaps I'd better tell you what I'm hearing because you may tell me that I'm wrong because what I'm hearing is that yes, on the one hand, we're keeping it privileged and close to our vest, but wink, wink, nod, nod, we tell everybody what's in it, in our way, because we don't say "Dr. Banerjee told us to do this." We say, "we now have, as a result of some external reviews," we might not even put it that way, but "we now have developed best practices which we have now established for our labs and we do want to share our best practice with you, which we

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have developed perhaps with the assistance of people who have come from outside, like British Columbia."

So in effect, you're telling everybody what Dr. Banerjee told you to do in your lab, but you're saying to somebody who might want to have access to that, "sorry, that's covered by the Evidence Act and we can't let you have it."

MS. JONES:

A. And I think that that's fair to say that, in terms of the way that you just explained it, and I think that at the end of the day, that does move the issue forward. You ask the question around the public, at this instance, when we talk about all of the recommendations that we would have put in place and trying to identify what the actual causal relationship on this particular test on that particular day, I don't know whether we will be able to, and that is really for, you know, others who know much more about this issue than me, but really all of this issue about policies, procedures, quality assurance, accreditation, education, best practice, that's a way of

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ensuring, in the future, that this doesn't happen again. So we create redundancies in the system, so that if there is an issue, the redundancy is always picked up and that's the discussion that we have all the time, around how can we make the system the best that we possibly can make it and create redundancy so that there is not an issue into the future, and that's our sharing that we would have with everybody else.

THE COMMISSIONER:

Q. So back to Ms. Chaytor's point, so wasn't fixation pretty critical for your colleagues across the province who were dealing with Eastern Health, who might not at that moment have been, but unless Mount Sinai talked to them about what they were doing in fixation, would have been carrying on as usual. Now I'm making an assumption. Perhaps their procedures were different than Eastern Health's and perhaps there was no problem with fixation outside of Eastern Health, I don't know that, but assuming for the moment that they had similar problems to those which were discovered within Eastern Health, then aren't

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we dooming them to repeat the errors while we, at Eastern Health, are carrying on?

MS. JONES:

A. And I think that you would really need to ask Dr. Williams, as well as Dr. Howell, what discussions they had with other lab directors or the people who were responsible for the lab and what actually did go out there in communication, because there were communication issues around fixation in 2003, and I only know that after the fact, but -

CHAYTOR, Q.C.:

Q. Dr. Ejeckam.

MS. JONES:

A. Yes, right, and so -

THE COMMISSIONER:

Q. Well, that didn't seem--well, I don't know, perhaps--so are you suggesting that Dr. Ejeckam's particular memo solved the fixation problems within Eastern Health?

MS. JONES:

A. No, I'm suggesting that that particular memo heightened and at least made people aware that there was a fixation issue.

THE COMMISSIONER:

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Q. Okay.

MS. JONES:

A. And that to pay attention to it. Did these -

THE COMMISSIONER:

Q. So if there were conversations of the informal kind about fixation, it would be Dr. Howell or Dr. Williams who would be expected to be involved in them?

MS. JONES:

A. It would, absolutely, from moving that issue forward with their counterparts.

THE COMMISSIONER:

Q. Okay, and what about the people in the laboratory, Dr. Cook or someone of that nature? Would he be expected to be involved in that kind of conversation?

MS. JONES:

A. I would think that Don Cook would have or the clinical chiefs that were in there, or at least in Dr. Ejeckam's time, it was the divisional chief responsible for.

THE COMMISSIONER:

Q. Okay, thank you. That's helpful.

CHAYTOR, Q.C.:

Q. Thank you. And then this bullet says

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"discussion ensued regarding the need to share the information," Ms. Jones, "with the other pathologists within the province." Dr. Howell is present and Dr. Howell is tasked with discussing this issue further with the solicitor.

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So I take it if that had happened and the information had already been conveyed, there would be no need for Dr. Howell and Dan Boone to be discussing the issue further.

MS. JONES:

A. I can't make a comment on that. This here just reflects that they would discuss that outside of this particular presentation.

CHAYTOR, Q.C.:

Q. Who's bringing up the issue? Who's saying discussion ensued? Obviously somebody is concerned about getting this information out to the other pathologists. Do you recall who was concerned about this?

MS. JONES:

A. No, I don't.

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CHAYTOR, Q.C.:

Q. Okay. And if Dr. Howell and Dr. Williams are the ones who would have conveyed the information, it appears that Dr. Howell is not aware of it.

MS. JONES:

A. And it may very well have been conveyed by Dr. Williams because he was there through the entire first year and maybe Oscar doesn't know the technical part of whether, in fact, Dr. Williams had already addressed that issue.

CHAYTOR, Q.C.:

Q. So, we're down to Dr. Williams, if it were conveyed?

MS. JONES:

A. Originally, and if it wasn't, then Dr. Howell would have been moving that forward.

CHAYTOR, Q.C.:

Q. Well, I would think Dr. Howell would jump into the fray here and say that, well, no, that's already been taken care of.

MS. JONES:

A. But he may not have known that -

CHAYTOR, Q.C.:

Q. If Dr. Howell had taken care of it.

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MS. JONES:

A. That's right.

CHAYTOR, Q.C.:

Q. So, we're down to Dr. Williams?

MS. JONES:

A. (No audible response).

CHAYTOR, Q.C.:

Q. Correct?

MS. JONES:

A. You'll have to ask Dr. Williams and Dr. Howell on that.

CHAYTOR, Q.C.:

Q. Okay. If I could continue on then with this-- still back at the November 21, 2006 meeting. The third bullet, "the following points raised during the presentation"--the third bullet-- "we have to position ourselves appropriately so that the public has confidence in the laboratory and that the people who have been waiting for information to have confidence and understanding of the events"--and I'm just reading it as it's written--"confidence in understanding of the events related to ER/PR testing. A subgroup will be established to identify key messages to be delivered and

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develop a strategic communication plan".

So, what was the concern here in terms of and did that subgroup actually come together?

MS. JONES:

A. I have no idea. I'm assuming you've got Dr. Howell in conjunction with Susan Bonnell to lead that subgroup. And there was a communication that happened in December. So, I would assume that that particular issue did be addressed in that forum.

CHAYTOR, Q.C.:

Q. Okay. So, that's the media briefing, December 2006.

MS. JONES:

A. And what messages were to be inside of that.

CHAYTOR, Q.C.:

Q. That's what this is about?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So, in terms of any information then that was conveyed, to allow the public to have confidence in the laboratory and an understanding of the events related to this issue, it would have been what was conveyed in

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the December 2006 media briefing?
MS. JONES:
A. Obviously that's what that would be moving towards.
CHAYTOR, Q.C.:
Q. Okay. And then the next bullet refers to the fact that there are currently vacancies in pathologist -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And that Dr. Howell has efforts underway to recruit those positions?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. The next bullet is "the organization needs to establish a date when it will return to "testing mode" and executive to agreed to extend ER/PR testing at Mount Sinai for another month". So, did that require the approval of the executive?
MS. JONES:
A. I think that the discussion was on--it wouldn't have required the approval of

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executive. There was discussion about at what point in time would we bring ER/PR testing back into our lab. And obviously, as you can see from this, there was parallel testing going on for a period of time and they were happy with the results of the parallel testing. The second or third bullet ahead of that talked about that. So -
CHAYTOR, Q.C.:
Q. So--sorry, didn't mean to cut you off.
MS. JONES:
A. So, there was always this discussion about at what point in time do we start retesting back in St. John's.
CHAYTOR, Q.C.:
Q. Yes. And this required the confidence of the oncologists and the medical staff?
MS. JONES:
A. And the medical staff and the discussion with MAC, locally.
CHAYTOR, Q.C.:
Q. And this says that the Medical Advisory Committee is a key group that confidence will need to be restored.
MS. JONES:

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A. Yes.
CHAYTOR, Q.C.:
Q. So, I take it, were you hearing that the oncologists and medical staff had lost confidence in the laboratory?
MS. JONES:
A. I'm not sure that that would be what I would say from that. I think the next sentence is, "MAC has a major role in quality".
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. And they would have wanted to be assured that we had a quality service that the parallel testing was going along well and that, in fact, that that service then was at a standard that could be restarted.
CHAYTOR, Q.C.:
Q. Okay. So, you weren't hearing from, for example, Dr. Kara Laing as the oncologist present at this meeting, are you hearing any issue regarding lack of confidence in the laboratory?
MS. JONES:
A. No, and what you would have been hearing is,

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is that only when we are comfortable with moving forward to restart that test, would we have done it and MAC would have probably said something like that. At the point in time when we have confidence in the system, talk to us and tell us what you're going to do.
CHAYTOR, Q.C.:
Q. So, obviously, that point hadn't been reached at this point because the executive is agreeing to extend the time at which Mount Sinai is going to do the testing?
MS. JONES:
A. Into the new year.
CHAYTOR, Q.C.:
Q. Into the new year. And this issue that MAC, Medical Advisory Committee, has a major quality role -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - and a direct line or reporting to the board.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. What does that mean that they have a major

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quality role?
MS. JONES:
A. That the quality of the medical staff, they report directly on the quality of care and the work that the medical staff do. And they report independently through to the board. All their credentials are approved at board as well as they do provide quality reports. They inform the board or advisory to the board on any issues that they see going on.
CHAYTOR, Q.C.:
Q. And did MAC, the Medical Advisory Committee, then perform a major quality role in dealing with the ER/PR issue?
MS. JONES:
A. I wouldn't think that they did. I think that the issue would have been brought by Dr. Cook at the time through to to say that probably we've stopped testing and we're investigating something. So, really, that you have the physicians in the area involved. And I'm sure at some point in time, the MAC minutes, there would have been discussion around ER/PR.
CHAYTOR, Q.C.:
Q. And what's the significance of saying that

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they have a direct line for reporting to the board?
MS. JONES:
A. Because their line for reporting is into the board. They've always had that.
CHAYTOR, Q.C.:
Q. In context of this issue, in talking about bringing the ER/PR testing back on stream, what's MAC's role in that?
MS. JONES:
A. It would be the individual discipline. It would have been Don Cook at the time or Nash Denic who--I'm not sure what point in time--making a recommendation through to Oscar Howell around that technical test piece about moving forward. If we talk about quality issues going to the board, they go through the CEO for all parts of the organization's quality issues with respect to physicians, in that respect generally come up through the MAC.
CHAYTOR, Q.C.:
Q. Did it involve MAC having to look at the credentialing of any of the physicians?
MS. JONES:

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A. Not that I'm aware of, I don't believe.
CHAYTOR, Q.C.:
Q. And in terms of any ongoing education piece for the physicians.
MS. JONES:
A. No, they wouldn't have had that, as well.
CHAYTOR, Q.C.:
Q. Okay.
MS. JONES:
A. They were concerned--if you see the one above it--around the vacancies. There had been discussion around vacancies inside of MAC.
CHAYTOR, Q.C.:
Q. Yes, but this is a different point -
MS. JONES:
A. Yeah, this is a different point.
CHAYTOR, Q.C.:
Q. - being made here, clearly a different point.
MS. JONES:
A. Absolutely.
CHAYTOR, Q.C.:
Q. This is about the getting in testing mode and having the confidence of the physicians.
MS. JONES:
A. But my response there was MAC does get

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involved in lots of issues. We would have heard a lot about the pathology issues and recruitment and retention; not sure to the extent about ER/PR as an agenda item, except in the report that Dr. Cook or Nash Denic would have been bringing forward as their quality report through to the MAC.
CHAYTOR, Q.C.:
Q. Okay. Because my issue is their role in quality and their role, the significance in reporting directly to the board. So, the quality report from MAC would go directly to the board?
MS. JONES:
A. That's right.
CHAYTOR, Q.C.:
Q. So, any issue regarding ER/PR, we would expect to see in that report?
MS. JONES:
A. Yes, if it was on--from a physician side. The technical side would have been in other -
CHAYTOR, Q.C.:
Q. Right, anything regarding the physicians we would expect to see in the report that goes directly to the board.

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MS. JONES:
A. Absolutely.
CHAYTOR, Q.C.:
Q. If it's there?
MS. JONES:
A. If it's there.
CHAYTOR, Q.C.:
Q. And the next bullet is "quality and risk management are confident that the appropriate processes are in place. Heather Predham advised that there are some recommendations from the review that have yet to be implemented". So this is November 21, 2006?
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And there's still some recommendations not implemented. "It's important to ensure that quality assurance monitoring processes are in place and can be sustained and monitored into the future. Documentation is of paramount importance and must be monitored and reviewed".
MS. JONES:
A. Yes.

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CHAYTOR, Q.C.:
Q. And then "the director and clinical chief are directly accountable for the laboratory". And Dr. Howell is agreeing to develop a proposal regarding the leadership component for further discussion.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. What does that mean for the director and clinical chief being directly accountable for the laboratory?
MS. JONES:
A. The director on the technical side and the clinical chief on the physician side. And Dr. Howell did come forward with a proposal at a later date to look at a single leadership stream accountable for both the technical as well as the physician side of the organization. So, a single point.
CHAYTOR, Q.C.:
Q. And I'm sorry, what was the recommendation?
MS. JONES:
A. The recommendation is that we would have the clinical chief--no, the new role that Nash

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Denic is playing -
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. - is the director of laboratory or clinical chief for laboratory. So, he has people who work with him, but he's overall responsible for the overall quality inside of the laboratory.
CHAYTOR, Q.C.:
Q. So, the role that Terry Gulliver was playing as program director, that role no longer exists in terms of the reporting structure. Now, it's Dr. Denic, is that right?
MS. JONES:
A. Dr. Denic is responsible for the overall that the program director, Terry Gulliver, is still there, as well as the managers and all of that. This was one of the recommendations that came out of the report, was to look at a single leadership, single individual as the ultimate point person for the quality inside of the lab. And that's what we've ultimately done with naming Dr. Denic in that role.
CHAYTOR, Q.C.:

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Q. And that's in place now?
MS. JONES:
A. That's in place now.
CHAYTOR, Q.C.:
Q. And when did that come to be?
MS. JONES:
A. We had been working on it through the fall of this year and actually named in the January/February, although the--it was released in about February of this year. But in fact, there had been discussions through the fall about not so much inside of the St. John's labs about how that would be a regional position versus just the lab position in St. John's. So, that was the discussion.
CHAYTOR, Q.C.:
Q. So, it's as of February 2008 that it's formally in place.
MS. JONES:
A. And it's a regional position.
CHAYTOR, Q.C.:
Q. And it's regional.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:

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Q. So, all the lab managers or program directors throughout the region all report up through to Dr. Denic?
MS. JONES:
A. Ultimately you have all of them from a technical side reporting into Terry Gulliver and then you have Nash Denic having the pathologists report into him. And then Nash having Terry report in that fashion.
CHAYTOR, Q.C.:
Q. Okay. And then ultimately Dr. Denic reports to Dr. Howell?
MS. JONES:
A. Dr. Howell, yes.
CHAYTOR, Q.C.:
Q. And what does it mean though for the director and clinical chief at this point in time, November 2006--it's still director and clinical chief--they're directly accountable for the laboratory. What does that mean?
MS. JONES:
A. That's overall accountability as a co-leadership team.
CHAYTOR, Q.C.:
Q. So, what does that mean in terms of what

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happened here in the ER/PR issue?
MS. JONES:
A. I can't really speak to the ER/PR, but the technical side of the laboratory would have been Terry's responsibility. And the administrative side and the physician side of the laboratory would have been in through the divisional chiefs and ultimately to the clinical chief.
CHAYTOR, Q.C.:
Q. Okay. So, if there were any issues regarding the technical side of things or the administrative side of things within the laboratory -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - if there were any issues or problems identified which may have contributed or caused the problem -
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. - Mr. Gulliver is accountable.
MS. JONES:

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A. Hm.
CHAYTOR, Q.C.:
Q. If there's any issues on the physician side of things which may have caused or contributed -
MS. JONES:
A. Then it would have been Dr. Denic.
CHAYTOR, Q.C.:
Q. - the clinical chief.
MS. JONES:
A. That's right. Those were the streams.
CHAYTOR, Q.C.:
Q. Dr. Cook, I guess. At different points in time, it's been different people, but it's the clinical chief.
MS. JONES:
A. That's right. And that would be no different that we have in all of the program areas that would have been the old health care corporation or into Eastern Health in my old portfolio. We would have a program director responsible for the day-to-day operations, budgets, those kinds of things and then we would have a physician chief or a clinical chief responsible for the physician side of that. But they work together from the

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perspective of planning the program and where the program needs to move, doing the budget, the strategic planning, those kinds of things. So, together they do those sorts of things. But on a day-to-day operational side, it would be the program director. On the physician side and the equality side for the physician, the credentialing on all of those things would fall on the realm of the clinical chief.
CHAYTOR, Q.C.:
Q. And what does it mean that they are accountable?
MS. JONES:
A. As a team, they are accountable for the -
CHAYTOR, Q.C.:
Q. How are they held accountable?
MS. JONES:
A. They are held accountable through to, in this instance, it would have been Oscar Howell or Dr. Williams for the care and the quality of the work that was done inside the program.
CHAYTOR, Q.C.:
Q. Okay. And has that happened?
MS. JONES:
A. To my knowledge it has.

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CHAYTOR, Q.C.:
Q. Okay. And when did that happen?
MS. JONES:
A. In terms of--what particular specific are you asking?
CHAYTOR, Q.C.:
Q. Is it Dr. Howell's day or was it Dr. Williams' day, for example?
MS. JONES:
A. For?
CHAYTOR, Q.C.:
Q. The accountability.
MS. JONES:
A. In both of them because Dr. Howell right now is responsible for the laboratory.
CHAYTOR, Q.C.:
Q. Yes.
MS. JONES:
A. And in Dr. Williams' day, it would have been Dr. Williams. So, for the period in time in which any issue they would have been accountable for what was going on inside the lab.
CHAYTOR, Q.C.:
Q. So, there's been accountability.

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MS. JONES:
A. Um-hm.
CHAYTOR, Q.C.:
Q. There's been accountability for this issue and Dr. Williams and/or Dr. Howell has seen to that.
MS. JONES:
A. That's right.
THE COMMISSIONER:
Q. Do you want to break now or if you're on a -
CHAYTOR, Q.C.:
Q. I had one other issue on -
THE COMMISSIONER:
Q. - question regarding this exhibit, carry on and -
CHAYTOR, Q.C.:
Q. I had one other issue on this exhibit, yes.
THE COMMISSIONER:
Q. All right.
CHAYTOR, Q.C.:
Q. This is at page 11 of the exhibit, Ms. Jones, and it's quality framework. And included in--this is the same meeting.
MS. JONES:
A. Yes.

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CHAYTOR, Q.C.:
Q. Included in the executive package was memorandum from Pat Pilgrim dated the 10th of November, 2006 outlining decisions related to the quality framework.
MS. JONES:
A. Right.
CHAYTOR, Q.C.:
Q. And the following summary of the decisions, 1) proceed with the quality framework focused on quality of clinical services. 2) all other aspects of organizational performance will be part of organizational effectiveness.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. OE framework led by Wayne Miller. Then 3) structures will proceed and include portfolio based quality committees. Reporting templates for directors annual quality reports has been developed. Indicator section will be further developed to reflect regional and program specific indicators. Quality will propose a list of generic quality indicators and an indicated report format; 5) all portfolio

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quality committees will report to the regional quality council, a copy of the terms of reference was circulated, reporting process for the regional quality council will be quarterly, with highlights only, required organizational practices, draft plan is being developed by quality and risk management.
MS. JONES:
A. Yes.
CHAYTOR, Q.C.:
Q. And my question on this is this is in November of 2006.
MS. JONES:
A. Uh-hm.
CHAYTOR, Q.C.:
Q. This is a new framework?
MS. JONES:
A. A new framework, a regional framework for Eastern Health.
CHAYTOR, Q.C.:
Q. Okay, and has it now been put in place?
MS. JONES:
A. It's been evolving and it still evolves, but yes, we have a quality framework, we have portfolio based committees, if you go down to

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three, we have a template for reporting, we are continuing to develop our quality indicators and the report format on that. All portfolio quality committees will report to the regional quality council, that's done. And required organizational practices, which comes out of the Canadian Council of Health Services Accreditation, a plan was developed by quality and risk management to move forward on all of those.

CHAYTOR, Q.C.:

Q. Okay, so there's a Regional and Quality Council?

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. So that's for the entire eastern Health region?

MS. JONES:

A. Yes, yeah.

CHAYTOR, Q.C.:

Q. Now is that the board committee?

MS. JONES:

A. No, since--in November of 2006, there was not a board safety or quality committee. We had

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only two committees of the sub-committees of the board, they would have been a finance committee and a planning committee. It wasn't until later, February maybe or through the fall of this year there was a discussion about a safety and improvement committee with terms of reference, as well as executive limitations and the development of a reporting structure through a sub-committee of the board and that has been in place and continuing to evolve, so that we still have the structures underneath it about portfolio quality committees, we still have a regional quality council. We then report into a safety and improvement committee of the board, which reports directly to the board.

CHAYTOR, Q.C.:

Q. Okay, I think I'll probably leave it at that today and start tomorrow and we'll look at the quality framework piece -

MS. JONES:

A. Yes.

CHAYTOR, Q.C.:

Q. And I think if you could think about articulating to us what all the different--

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what are the steps, like who has responsibility, what does the board committee do, what does quality, regional and how they all connect and maybe we could pick it up there tomorrow then.

THE COMMISSIONER:

Q. All right then, 9:30 in the morning.

CHAYTOR, Q.C.:

Q. Thank you.

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CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the Commission of Inquiry on Hormone Receptor Testing, heard on the 28th day of April, A.D., 2008 before the Honourable Justice Margaret A. Cameron, Commissioner, at the Commission of Inquiry, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 28th day of April, A.D., 2008

Judy Moss

-B-

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-T-