COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

July 10, 2008

Appearances:

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

Jackie Brazil . . . . . Her Majesty in Right of NL

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

Daniel Simmons . . . . . 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)
Blair Pritchett. . . . . Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

THIS PAGE ONLY REVISED NOVEMBER 18, 2008

LIST OF EXHIBITS

TABLE OF CONTENTS

THE COMMISSIONER:
Q. Mr. Coffey.
COFFEY, Q.C.:
Q. Thank you, Commissioner. The next witness is Dr. Paul Neil.
DR. PAUL NEIL, SWORN, EXAMINATION BY BERNARD COFFEY, Q.C.
REGISTRAR:
Q. Would you please state and spell your complete name for the Commission?
DR. NEIL:
A. Paul Reginald Neil. Last name, spell the last name?
REGISTRAR:
Q. Yes, please.
DR. NEIL:
A. N-E-I-L.
REGISTRAR:
Q. Thank you very much.
DR. NEIL:
A. Thank you.
COFFEY, Q.C.:
Q. Doctor, you got away easily.
DR. NEIL:
A. Short name.
COFFEY, Q.C.:

Page 5

Q. Many people have had to spell their full first and last names. Commissioner, I have a request to enter some exhibits, please, and they are Exhibits P-2225 through 2270 inclusive, 2273 through 2280 inclusive, 2282 through 2296 inclusive.

THE COMMISSIONER:

Q. Entered.

EXHIBITS ENTERED AND MARKED P-2225 THROUGH P- 2270

EXHIBITS ENTERED AND MARKED P-2273 THROUGH P- 2280

EXHIBITS ENTERED AND MARKED P-2282 THROUGH P- 2296

COFFEY, Q.C.:

Q. Thank you, Commissioner. Registrar, could we bring up, please, Exhibit P-2225, please? Dr. Neil, I understand that this is your curriculum vitae?

DR. NEIL:

A. That's correct.

COFFEY, Q.C.:

Q. And if we could, please, I'm not going to take you through all the details of it, but I'm going to ask you to outline for the Commissioner, please, highlight for her your educational background and your professional background, please?

Page 6

DR. NEIL:

A. I started as a staff pathologist in Corner Brook in January of 1987.

COFFEY, Q.C.:

Q. If I could, please, medical school first, and then -

DR. NEIL:

A. Sure. I did my training at Health Sciences Centre in St. John's, Memorial University. First of all, I had a Bachelor of Science in Chemistry in May 1977, Bachelor of Medical Science in May 1979, and an MD in 1981 from Memorial University. My post-graduate education was from Memorial University, majority of that training was there. A very short period of time, I spent in Toronto Western Hospital, at the end of my training. Rotating internship was in June 1981 until June 1982 and my general pathology residency was July '82 to December '86.

COFFEY, Q.C.:

Q. And then after that?

DR. NEIL:

A. January '87, I started as a staff pathologist at Western Memorial and that continued until

Page 7

May 1992, when I became Associate Director of Pathology, and that position lasted until October 1998 when I became the Director in that position, from November until the present day.

COFFEY, Q.C.:

Q. And Doctor, are you a member of the Canadian College or the American College?

DR. NEIL:

A. American.

COFFEY, Q.C.:

Q. American College of Pathologists?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And Doctor, could you tell the Commissioner, please, what the responsibilities are of your current position, in the sense of who do you report to, who reports to you, how many people report to you and what you're actually responsible for?

DR. NEIL:

A. The current position that I hold, my title is really the Regional Chief of Discipline of Pathology and Laboratory Medicine. That

Page 8

position has a reporting mechanism whereby I report to the VP of Medical Services, Dr. Ken Jenkins. Working directly with me, side by side, is a regional director of laboratory services. Below her, there are two other laboratory--assistant laboratory managers, which I work directly with as well. We have, in our institution now, four pathologists working. We have position for five, which is not currently filled, but should be filled by the end of the month.

COFFEY, Q.C.:

Q. And so that number of positions, is that in addition to yourself or including you?

DR. NEIL:

A. That's including myself.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. So there's four current, five to be, and I'm actually looking for a sixth.

COFFEY, Q.C.:

Q. Is there funding for the sixth position?

DR. NEIL:

A. Not yet.

Page 9

COFFEY, Q.C.:
Q. Okay, but -
DR. NEIL:
A. I'm hoping.
COFFEY, Q.C.:
Q. Okay. Go ahead, Doctor.
DR. NEIL:
A. Okay, so those people, those pathologists work directly with me and take direction from me in the appropriate manner.
COFFEY, Q.C.:
Q. Are they located in the same building you are?
DR. NEIL:
A. Yes, they are.
COFFEY, Q.C.:
Q. Go ahead, I'm sorry.
DR. NEIL:
A. So that's--is that what you're looking for?
COFFEY, Q.C.:
Q. Yes, that's the kind of--the structural arrangement?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And I take it that that arrangement is for the

Page 10

Western Regional Health Authority?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Which would have come into being, I understand, April 1st, 2005?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. That has been the structure since April 1, 2005?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. How about before that, Doctor?
DR. NEIL:
A. Before that, Western was called Western Health Care Corporation. The structure prior to 2005 was very much similar. With regionalization provincially, and I know that's what you're referring to, the catchment area for Western did not change. So really remains -
COFFEY, Q.C.:
Q. Between like March 31st, 2005 and April 1, 2005, it remained more or less the same?

Page 11

DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. Regionalization--Western Health Care Corporation came into being around '99.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. And that structure that I spoke about, the Regional Chief of Discipline of Pathology and Laboratory Medicine was established then.
COFFEY, Q.C.:
Q. And dates back to 1999?
DR. NEIL:
A. Dates back to '99.
COFFEY, Q.C.:
Q. And you've held that position since that time?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Before that, what was the structure?
DR. NEIL:
A. Before that, we were under really Western

Page 12

Memorial Hospital and -
COFFEY, Q.C.:
Q. That would date back how far?
DR. NEIL:
A. That would date back way before my time.
COFFEY, Q.C.:
Q. All right.
DR. NEIL:
A. And the structure there, the pathologist in charge, when I first came there, was in charge of Western Memorial itself, the laboratory there, but he also had responsibilities outside Western Memorial, for the pathology aspect of other hospitals, which were included in that region, including Stephenville, Port aux Basques, Port Saunders, any pathology specimens that would fall into that catchment area of Western Memorial. So his duties really did not encompass as much as the duties that I deal with today. He dealt with the pathology aspect. Today, I deal with that, plus all other laboratory related issues from all those labs from Port aux Basques to Port Saunders inclusive, those being including--those including issues such as chemistry,

Page 13

microbiology, hematology, that sort of thing, and the administration that goes along with that.

COFFEY, Q.C.:

Q. So Doctor, for example, in the year then say 1997, 1998 up until the creation of the regional authority in 1999, in the years '97, '98, into '99, at that time, for example in relation to breast tissue, okay, breast surgery in that catchment area, as you put it -

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. - would be performed in which hospitals?

DR. NEIL:

A. Mainly at Western. Occasionally, and sometimes more often than not, and probably less so now than it used to be, Stephenville would have a surgeon. The remaining hospitals did not, not to the best of my knowledge.

COFFEY, Q.C.:

Q. And the hospital, the name of the hospital in Stephenville?

DR. NEIL:

Page 14

A. Sir Thomas Roddick.

COFFEY, Q.C.:

Q. So that if in some of the materials--because there are numerous spreadsheets of one form or another that have been and I anticipate may be entered it, if there's a reference to Western Memorial, Sir Thomas Roddick, that in fact is the Stephenville hospital?

DR. NEIL:

A. Yes, that's correct.

COFFEY, Q.C.:

Q. Okay, and in those days, if there was breast surgery in Stephenville, how would the sample end up in Corner Brook? Would it go--would it end up in Corner Brook for any kind of testing that was required by a pathologist or analysis?

DR. NEIL:

A. All samples, all pathology samples came to Corner Brook for testing.

COFFEY, Q.C.:

Q. In what form would it come to Corner Brook? Would it be already encased in a block, in blocks, or would it -

DR. NEIL:

Page 15

A. No, they would come in formalin, in a formalin container with the tissue in it.

COFFEY, Q.C.:

Q. Okay, so that would be dating back to '98/99

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. If there was any surgical sample that required pathology work -

DR. NEIL:

A. Any surgical or cytology sample that required us to deal with came in a proper container in formalin or alcohol, if it was cytology. It would come to us.

COFFEY, Q.C.:

Q. And there it would be grossed and accessioned and grossed?

DR. NEIL:

A. And there it would be grossed and accessioned, yes.

COFFEY, Q.C.:

Q. Were there any other hospitals that were the origins of surgical samples back in those days?

DR. NEIL:

Page 16

A. Yes.

COFFEY, Q.C.:

Q. Which other ones?

DR. NEIL:

A. Port aux Basques sent some.

COFFEY, Q.C.:

Q. Would they have sent breast?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. No, okay.

DR. NEIL:

A. Port Saunders occasionally will send some.

COFFEY, Q.C.:

Q. But not breast tissue, I take it?

DR. NEIL:

A. No. No, the only breast tissue that came was Stephenville, Sir Thomas Roddick.

COFFEY, Q.C.:

Q. Okay, and what about--when did that last happen, breast tissue coming from Stephenville?

DR. NEIL:

A. It still continues to come today.

COFFEY, Q.C.:

Page 17

Q. It does today?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay, and so I take it at various times over the years, if there's a surgeon in Stephenville -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. - that performs breast surgery, then it would be done there?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And the tissue specimens are transported to Corner Brook?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Your institution for processing?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Is that, in fact, going on right now?

Page 18

DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Currently, okay. Doctor, are you aware of exactly what means is used to transport such tissue?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay, could you tell the Commissioner, please, about that?
DR. NEIL:
A. When the tissue is removed in the OR in Stephenville, it's collected, brought by hospital truck.
COFFEY, Q.C.:
Q. In Stephenville, what's done with it?
DR. NEIL:
A. I haven't actually seen it.
COFFEY, Q.C.:
Q. Well, what's your understanding?
DR. NEIL:
A. My understanding is that the specimen is removed from the patient as per usual, placed in the appropriate fixation, formalin.

Page 19

COFFEY, Q.C.:
Q. So I take it it's immersed in formalin?
DR. NEIL:
A. Immersed in formalin. The specimen, the surgery that was done that day is brought in by hospital truck.
COFFEY, Q.C.:
Q. How long does it usually take, do you know?
DR. NEIL:
A. It's usually the same day.
COFFEY, Q.C.:
Q. So if a surgery, for example, occurs in the morning in Stephenville, it would arrive in the normal course, when in your institution?
DR. NEIL:
A. The surgery--the truck usually arrives around noon. So whatever they can put on that, that truck, when it comes through Stephenville, would be put on that truck and brought to us. If there are things are done later in the afternoon, obviously that will have to wait until the transport the next day.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:

Page 20

A. But there's a truck on a daily basis that comes with those specimens.
COFFEY, Q.C.:
Q. And they arrive at your institution?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Are they in any way refrigerated, you know, in the transport process, do you know?
DR. NEIL:
A. In the transport process, I don't think so, but I don't honestly know.
COFFEY, Q.C.:
Q. Okay. So when you--when they arrive at -
DR. NEIL:
A. Let me correct myself. I do know that they are put in cooler, like a picnic cooler.
COFFEY, Q.C.:
Q. Inside a container inside a picnic cooler?
DR. NEIL:
A. The containers are put in a picnic cooler, I do know that.
COFFEY, Q.C.:
Q. So when you first get them, what do you actually see then, Doctor, I mean, a breast

Page 21

specimen from Stephenville?
DR. NEIL:
A. They arrive at my grossing bench. Someone has removed them from that picnic table--or picnic cooler, I'm sorry, and someone has removed them and brought them to our grossing bench.
COFFEY, Q.C.:
Q. And then when you open the container, I take it it's a sealed container, each one?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. The tissue specimen would be there as it was excised, I take it, whatever form it was in?
DR. NEIL:
A. Yes, that's correct.
COFFEY, Q.C.:
Q. What's the process now then in terms of how are they handled in Corner Brook then? If you had been not here today, you were in Corner Brook and receiving such a specimen, how would you handle it?
DR. NEIL:
A. A breast specimen?
COFFEY, Q.C.:

Page 22

Q. Yes.
DR. NEIL:
A. Today, we would look at the specimen, match the requisition with the specimen container, to make sure we're dealing with the correct patient. It would be accessioned, given a surgical number, dated. That's all done by our technologists. It's given to us to examine. So, as you say, we open it up, remove it, place it on our grossing bench, do our description of what we have to deal with, which this really applies to any surgical specimen.
COFFEY, Q.C.:
Q. I appreciate that.
DR. NEIL:
A. Describe what we see, measurements, weights, that sort of thing. For breast particularly, we will mark the surgical margins with ink appropriately, giving orientation.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. After that is done, we will bread slice it. Do you want -

Page 23

COFFEY, Q.C.:
Q. And what, in fact, does that mean, yes?
DR. NEIL:
A. That means we take a large knife and we incise that breast tissue in small, as small as we can, slices across its face, from the under surface, not from the skin surface, from the under surface.
COFFEY, Q.C.:
Q. Under surface, yes.
DR. NEIL:
A. Because that's easier, it's easier to cut. Then you'll find where your tumour is.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. That tumour has to be then exposed to formalin again. So after it's breast sliced and marked, we can take paper towel, that sort of thing, place it in between those bread slices and the purpose of that is to--I guess you've heard the term wicking?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:

Page 24

A. Is to get more formalin in between those spaces.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. So the tissue can adequately fix or be exposed to the formalin within the container. We will let that fix overnight. The next morning, if this is my case, the next morning, I'll go back, remove the wicking, take the breast out of the formalin, remove the wicking, again examine the slices that I've seen, describe what I see, look for the tumour or the lesion that the breast was removed for, presume it was a tumour, a malignant tumour, find that tumour, describe it, measure it and take samples of that tumour in small blocks, small pieces, and furthermore, we will take samples of the surrounding breast tissue, the nipple area, any overlying scarring that may have occurred in prior--for prior surgery, anything that is appropriate that we may have to look at under the microscope. That will be processed through our tissue processor that night.

Page 25

COFFEY, Q.C.:
Q. Yeah, I was going to say then, Doctor, how does it end up from you to the tissue processor?
DR. NEIL:
A. From me to the tissue processor?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. The tissues are placed in these small blocks, small cassettes. They have a cover on them, they're all numbered. At the end of the day, we have a fair number of these blocks from all the tissues that we examined during that day. These blocks are then placed in a rack, moved from that rack to the tissue processor, which happens to be just behind me. I would place them in that tissue processor. That processor is timed to start at a certain time during the evening and to process the tissue overnight. Would you like me to keep going?
COFFEY, Q.C.:
Q. Yes, Doctor, exactly.
DR. NEIL:
A. It's processed over night. That process

Page 26

removes the water and that sort of thing and impregnates the tissue with wax. Early in the morning that tissue has wax in it. It's then removed, taken by the technologist.
COFFEY, Q.C.:
Q. I was going to say, so this part of the process the next morning --
DR. NEIL:
A. The next morning is a technologist's duty.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. The technologist takes it. He or she will what we call imbed the tissue, which means they would place the tissue appropriately in that block in order for them to then later on that morning place it in a microtone which is an instrument that will slice a piece of that tissue from that paraffin imbedded block into a very small slice and place it on a glass slide. Remember now during all this process the numbering of the sample is watched as it will go through to make sure we have the right patient.
COFFEY, Q.C.:

Page 27

Q. And right patient's tissue. So it goes through and then we have -- you've created the slides in your scenario by this point in time. Not you, but the technologist.
DR. NEIL:
A. The technologist has created the slides that are unstained.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. So when you look at the actual slide, you won't see very much except a very thin film of wax and you may not be able to see that very well, but it's there. These slides are then taken and stained appropriately with stain we call H & E. They're cover slipped by a very thin piece of glass placed over that piece of tissue and it's sealed and then tried and given to us to interpret that same morning.
COFFEY, Q.C.:
Q. Now, Doctor, I take it then, the H & E slide is used for, in effect, your diagnosis as to the type of tumour and how -- you know, if it's invasive, how far it's gone and so on.
DR. NEIL:

Page 28

A. Correct.
COFFEY, Q.C.:
Q. And in relation then to estrogen receptors and progesterone receptors, ER and PR, and I gather now HER2/neu --
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. When is that ordered and how does that come about?
DR. NEIL:
A. After we look at the H & E slide of the tumour,there may be three or four H & E slides that are representative of that tumour. We look at that slide. Number one, make a diagnosis. After we make the diagnosis, we will select one of those representative slides to choose a block that's appropriate to send for ER/PR and Her-2-neu.
COFFEY, Q.C.:
Q. And today, what criteria do you utilize in choosing a block?
DR. NEIL:
A. When we look -- when I look at and when we look at-- not only me, we have four other

Page 29

people that do the same thing. We look at that block -- look at that slide, I'm sorry. We will look at that slide to make sure we have, number one, enough tumour, and number two, we will look to see if there's normal breast tissue surrounding that tumour.

COFFEY, Q.C.:

Q. And that is for the purposes of what we've heard referred to as internal controls being utilized?

DR. NEIL:

A. Correct.

COFFEY, Q.C.:

Q. And the current situation at Western Health is what in terms of where are the ER and PR and HER2/neu tests being done?

DR. NEIL:

A. Today?

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. Mount Sinai.

COFFEY, Q.C.:

Q. Mount Sinai?

DR. NEIL:

Page 30

A. Yes.

COFFEY, Q.C.:

Q. I'll be taking you to how that has come about over the years and so on. In the current situation then, and I'll be even taking you to the arrangements and what they are currently, but you, having -- you or your fellow pathologists having identified a particular block for ER/PR and HER2/neu, from your perspective the most appropriate one, what then is done?

DR. NEIL:

A. Once the block is identified?

COFFEY, Q.C.:

Q. Yes.

COFFEY, Q.C.:

Q. Once that block is identified, because we have to make arrangements to send it to Mount Sinai, I will instruct my secretary with an appropriate requisition to send this slide and requisition to Dr. Brendan Mullen in Mount Sinai.

COFFEY, Q.C.:

Q. And then what happens, as best you know?

DR. NEIL:

Page 31

A. It gets sent.

COFFEY, Q.C.:

Q. It gets sent. Then what has been your experience currently as to -- so it's the block that's sent, not the --

DR. NEIL:

A. It's the block that's sent.

COFFEY, Q.C.:

Q. Is there anything else sent other than the block? Do you send any of the H & E stained slides?

DR. NEIL:

A. No, we send the block.

COFFEY, Q.C.:

Q. You send the block. How about the pathology report?

DR. NEIL:

A. I don't think that's sent.

COFFEY, Q.C.:

Q. And how long then currently does it take you to hear from Dr. Mullen?

DR. NEIL:

A. About ten days.

COFFEY, Q.C.:

Q. And how does he report the results?

Page 32

DR. NEIL:

A. The report is initially faxed from Mount Sinai, his report is faxed. So that obviously improves the turnaround time. After it's faxed, I guess, their secretaries or administrative people will mail the hard copy of that report to us. So we have a fax copy and the original copy.

COFFEY, Q.C.:

Q. When you receive that copy of the report, what if anything then do you do in terms of recording this on a patient's information?

DR. NEIL:

A. Well, we record that we received it obviously. To get it into our system, our secretary will type that report verbatim into our Meditec System. That's our computer system. When that's done, it's done as an addendum to the report that we initially sent. In other words, our diagnostic report. So that'll go as an addendum to that patient's diagnostic report. She will then inform me by bringing me the original report that she's typed into the system, and bring me or any of our pathologists the original report -- actually,

Page 33

she brings me the faxed report because that's the first one she gets, confirm to me that she's typed it in the system. I would check it to make sure there are no typing errors in it and I will sign it electronically.

COFFEY, Q.C.:

Q. Doctor, is the report then, the ER/PR and HER2/neu status report distributed to anyone, like, any of the attending physicians, other physicians, do you know?

DR. NEIL:

A. The physician -- obviously, the physician who did the surgery will get that report, and if he or she decided to copy to the family doctor or appropriate people that this lady would be seeing, it would be defined on the requisition, copy to so and so, copy to so and so. Whoever requested that report initially would decide where the report went.

COFFEY, Q.C.:

Q. Okay. Doctor, we started out with tissue that was coming from Stephenville.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Page 34

Q. What if any differences -- I'll back up. What other ORs will you receive breast tissue from other than Stephenville?

DR. NEIL:

A. Western.

COFFEY, Q.C.:

Q. Western itself, the actual building that you work in?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. In terms of the scenario that you've described for me, the process that you've described for me, the tissue from the Western Memorial's own ORs, how does that end up coming to you, in what form does it come, and what's the timing and so on? Today now?

DR. NEIL:

A. Today?

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. It comes in the same form. In other words, it's in a formalin container. It comes on a regular basis from the operating rooms. We

Page 35

have a scheduled pick up time throughout the day -- times throughout the day, and I believe that there are actually five times that specimens are delivered to us during the day. So we receive specimens -- any specimens from the operating room quite frequently on a daily basis.

COFFEY, Q.C.:

Q. And if you had -- I take it, is it particular pathologists are responsible on particular days for anything that comes in?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Any specimens that come in. So if it happens to be your day today, okay, from the OR, it would show up, I take it, in a formalin container?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. With formalin, emersed in formalin?

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Page 36

Q. And in a form that was taken from the patient?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And then the process starts.

DR. NEIL:

A. Exactly as I described for Stephenville.

COFFEY, Q.C.:

Q. As you did before with opening the container?

DR. NEIL:

A. Yes, exact same process.

COFFEY, Q.C.:

Q. And then from then on?

DR. NEIL:

A. The exact same process.

COFFEY, Q.C.:

Q. Exact same process.

COFFEY, Q.C.:

Q. Doctor, is there any particular -- you referred to the idea that there are about five deliveries a day, scheduled deliveries from the OR. Is there any particular days of the week that breast surgery is performed in Corner Brook?

DR. NEIL:

Page 37

A. Breast surgery is performed Mondays, Tuesdays, and Wednesdays, and occasionally on a Thursday.

COFFEY, Q.C.:

Q. And since when has that been going on?

DR. NEIL:

A. For a long time. I've been in Corner Brook for 21 years. It's unusual for breast surgery to be performed on Friday.

COFFEY, Q.C.:

Q. And why is that? Why is it Monday, Tuesday, Wednesdays preferably and --

DR. NEIL:

A. Historically?

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. I guess it's the surgeon's preference.

COFFEY, Q.C.:

Q. How about now from a pathologist's perspective?

DR. NEIL:

A. I have said that breast surgery should not be performed on Friday.

COFFEY, Q.C.:

Page 38

Q. And why is that?

DR. NEIL:

A. Because of the issue of fixation.

COFFEY, Q.C.:

Q. Okay, and I'll be -- there's an exhibit there. I'll be returning to that to canvas that with you for the Commissioner. What about surgery being performed late in the day, for example, on a Monday, Tuesday, or Wednesday, how is that handled today?

DR. NEIL:

A. Again you're referring to what happens today?

COFFEY, Q.C.:

Q. Yes, today.

DR. NEIL:

A. We know what surgery is being performed on a daily basis. We have a listing from the operating room. We know that on a Monday we have maybe two mastectomies. So we know that we should expect two mastectomies before the end of the day in our lab. As a matter of fact, last week I was expecting one and I had to phone the OR and say make sure it gets it before I leave. So we know it has to be in our hands before we leave.

Page 39

COFFEY, Q.C.:

Q. So if there is a mastectomy, one or more scheduled for a particular day, and you have the OR schedules, you or your fellow pathologists have the OR schedules daily, the arrangement -- you say it has to get to you. What is the understanding now as to how that's to be --

DR. NEIL:

A. I'm not sure I understand the question.

COFFEY, Q.C.:

Q. Well, you made a comment just then you phoned the OR even last week to tell them I know there's a mastectomy going on, it has to get to me before I leave today.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. So is there any kind of understanding now about what the scheduling should be, by what time it has to be in your hands?

DR. NEIL:

A. Yes, there is an understanding that the laboratory has to receive that. The operating room does know that.

Page 40

COFFEY, Q.C.:

Q. So they have to have the surgery done and the sample down to you by a particular point in the day?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And why is that?

DR. NEIL:

A. So we can properly handle that tissue for overnight fixation.

COFFEY, Q.C.:

Q. Which I take it is the bread loafing?

DR. NEIL:

A. Which is the bread loafing.

COFFEY, Q.C.:

Q. To start -- to do the bread loafing process, get the wicking process started?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. So you come in the next day and you --

DR. NEIL:

A. I do the process I mentioned to you.

COFFEY, Q.C.:

Page 41

Q. Doctor, is there any such thing as emergency mastectomy surgery?
DR. NEIL:
A. Not that I'm aware of.
COFFEY, Q.C.:
Q. I'm not suggesting there is. I just --
DR. NEIL:
A. It's not something that should be done.
COFFEY, Q.C.:
Q. To return to Stephenville in terms of the days of the week that breast surgery occurs on, what's the current practice in Stephenville?
DR. NEIL:
A. It's not done very often. I don't think there's a particular day.
COFFEY, Q.C.:
Q. What would happen if, for example, it was a Friday morning that surgery occurred in Stephenville and the breast specimen did not make it to the noon day truck? What would the situation be then?
DR. NEIL:
A. If we didn't know about it, it's a problem.
COFFEY, Q.C.:
Q. Because it would be sitting --

Page 42

DR. NEIL:
A. It would be sitting in formalin without being bread loafed all weekend. With the surgery in Stephenville, and I'm -- I know that the surgeon that's there now has received a memo from me. So he will not be doing surgery on Friday.
COFFEY, Q.C.:
Q. And the memo in question, does it explain what that is so, why you don't want it done on Friday?
DR. NEIL:
A. I'd have to refer to the memo.
COFFEY, Q.C.:
Q. Okay, doctor.
DR. NEIL:
A. I think it's at the end of this. Yes, and I did say --
COFFEY, Q.C.:
Q. What's the exhibit number, Doctor?
DR. NEIL:
A. The exhibit number is 2296.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:

Page 43

A. And I did mention at the end of the paragraph, "Surgery should be done Monday through Wednesday. This is to facilitate proper fixation for ER/PR testing".
COFFEY, Q.C.:
Q. Yes. I was going to ask you about that, Doctor, because that's to surgeons?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. In the OR, which would be Western Memorial itself?
DR. NEIL:
A. Which includes Stephenville. This should have gone to Stephenville as well.
COFFEY, Q.C.:
Q. I was going to ask you about that. What then -- so the Commissioner understands the current arrangement, okay, in Western Health Authority, looking at page one of this exhibit, there's an e-mail of May 6th, 2008. Well, there are two of them, actually, one from yourself to J. Grabka?
DR. NEIL:
A. Grabka.

Page 44

COFFEY, Q.C.:
Q. Okay, who is that?
DR. NEIL:
A. She is the assistant laboratory manager in charge of pathology and other areas, but pathology mainly.
COFFEY, Q.C.:
Q. And it's a memorandum on breast scheduling. It's copied to Ken Jenkins. Dr. Ken Jenkins, I take it, is the VP Medical?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And he has then forwarded it to Helen Sparkes, and who is she?
DR. NEIL:
A. Helen is Dr. Jenkins' secretary.
COFFEY, Q.C.:
Q. And for the ER/PR file, and in any case, the actual memorandum, of course, is page two which you just referred the Commissioner to.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And when you address something to surgeons OR,

Page 45

that should go -- your understanding is that goes to the surgeons in the OR in Western Regional -- Western Memorial, I'm sorry.

DR. NEIL:

A. This memo --

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. Should have gone to surgeons, any surgeons that do breast surgery.

COFFEY, Q.C.:

Q. Within?

DR. NEIL:

A. Within Western Health Care Corporation -- within Western Health.

COFFEY, Q.C.:

Q. Western Health, and who's responsible for that, Doctor, actually doing the distribution?

DR. NEIL:

A. I passed this to our lab manager.

COFFEY, Q.C.:

Q. And that's the --

DR. NEIL:

A. The e-mail that you have.

COFFEY, Q.C.:

Page 46

Q. Now, Doctor, are there any other memos to surgeons addressing this issue of the timeliness of surgery and -

DR. NEIL:

A. No, there are no memos that I am aware of, but I will tell you that we have a breast surgeon in Corner Brook, a very active breast surgeon in Corner Brook who just recently came back to work. She was off on maternity leave. Her scheduled OR when she was coming back to work was going to be Thursday. Her husband actually is another surgeon there, his scheduled OR day was Wednesday. So I had a discussion with him and her, please switch your days. They did.

COFFEY, Q.C.:

Q. To accomplish your goal.

DR. NEIL:

A. To accomplish my issue. So there are no memos to that; I spoke to them personally and Dr. Jenkins was aware of it--my discussions.

COFFEY, Q.C.:

Q. Well, Doctor, in relation to the issue of fixation, tissue fixation and tissue processing in relation, at least anyway to

Page 47

breast tissue, this particular memo exists. Are there any others involving pathologists that you are aware of, that relate to pathologists themselves involving breast tissue, you know, in effect at Western right now?

DR. NEIL:

A. You're referring to fixation protocol?

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay, and could you tell the Commissioner please about that, what the current situation -

DR. NEIL:

A. The current situation is that we fix tissues according to the fixation protocol that was given to me, faxed to me from Eastern Health a little while--not a little while ago, quite a while ago, I'm not sure--I can't tell you the date because I don't remember the date.

COFFEY, Q.C.:

Q. And do you recall if that fixation protocol

Page 48

was a draft one or the final version or do you really know?

DR. NEIL:

A. It looked pretty close to a final version. It didn't say "draft" on it.

COFFEY, Q.C.:

Q. And this particular fixation policy or protocol, was it just the one? Was there any other -

DR. NEIL:

A. Anything that had to do with breast tissue: fixation, grossing, needle core biopsies, lumpectomies, whatever pertained to breast tissue with regards to fixation, processing, grossing, whatever, is what I'm referring to.

COFFEY, Q.C.:

Q. Okay, so any of those protocols that they sent, is there just the one or is there more than one, do you know?

DR. NEIL:

A. No, there's a stack of them.

COFFEY, Q.C.:

Q. Stack of them. And, if I could, Commissioner, as this may be an evolving thing because such policies and protocols can evolve over time,

Page 49

be amended over time. If I could ask, Mr. Browne and Mr. Pritchard, ask the Doctor to, when he returns to Corner Brook, to package up, photocopy and package up and provide to your counsel to provide to myself and Ms. Chaytor, and you can even date the cover sheet as to what the current one is, at least the most current one that you can -

DR. NEIL:

A. I can provide it to you this afternoon.

COFFEY, Q.C.:

Q. If you could, that would be great, Doctor, if we could please, thanks, that's all, so we know exactly what's in place now, okay.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And it may help if you're able to ascertain when it was that the communication went to you, the last version.

DR. NEIL:

A. I can do that.

COFFEY, Q.C.:

Q. Thanks, Doctor. Doctor, is there any policy in place to deal with the issue of delays from

Page 50

Stephenville due to weather, inclement weather? You know, a tissue sample that is coming from Stephenville, that it's delayed and the weather happens to very nice here locally, but it's not unknown that we have bad weather, is there any -

DR. NEIL:

A. Well obviously it would come the next day, the next appropriate day, but there's not, not to my knowledge, a policy that says keep it until the weather is better.

COFFEY, Q.C.:

Q. Or to do any particular thing with it in the meantime?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Like for example, to refrigerate it?

DR. NEIL:

A. Not that I'm aware of. I'm not saying it's not there.

COFFEY, Q.C.:

Q. Doctor, thinking of or dealing with refrigeration, are there any refrigerators in or connected with the ORs in Western?

Page 51

DR. NEIL:

A. Yes, there's a refrigerator in the OR.

COFFEY, Q.C.:

Q. Do you know if there's any policy in the OR in terms of refrigerating breast or cooling breast tissue?

DR. NEIL:

A. It is my understanding that breast tissue removed from the OR is placed in formalin and then placed in the refrigerator.

COFFEY, Q.C.:

Q. To await the porter.

DR. NEIL:

A. To await the porter.

COFFEY, Q.C.:

Q. And that's been going on how long, Doctor, do you know?

DR. NEIL:

A. Quite awhile.

COFFEY, Q.C.:

Q. When you say "quite awhile" what would be, in this context what would be quite awhile, do you know?

DR. NEIL:

A. Years.

Page 52

COFFEY, Q.C.:

Q. Was that going on before July 2005, do you think or is it since this ER/PR matter came to the fore -

DR. NEIL:

A. I think it's been going on quite awhile, I can't give you the date because I don't know the date.

COFFEY, Q.C.:

Q. And that process, Doctor, or the utilization of refrigerator, do you recall whose idea that was? Was that something that the Perioperative Program came up with or was it the Pathology Department, Lab Department?

DR. NEIL:

A. It wasn't my idea, but I know it's there, it should be there and I can't answer for the Perioperative Program, I don't know who put it there--I would think it came from the operating room itself, but I don't know the answer to that.

COFFEY, Q.C.:

Q. Now, Doctor, the Commissioner has heard evidence concerning fixation of--and processing of breast tissue in more recent

Page 53

times, like say over the past two or three years, Dr. Mullen has been dealing with samples throughout Newfoundland.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Have you had occasion to speak to Dr. Mullen recently?

DR. NEIL:

A. No.,

COFFEY, Q.C.:

Q. Well first of all, I'll go back a bit, Dr. Mullen has been doing, I gather, from the documentation ER/PR and Her2/neu.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Reporting from, well for Western Health since around September 2005.

DR. NEIL:

A. That's correct.

COFFEY, Q.C.:

Q. And we'll see that in the documents. How much contact did you actually have with Dr. Mullen since November 2005 in a direct way?

Page 54

DR. NEIL:

A. In a direct way? None, until just recently.

COFFEY, Q.C.:

Q. Okay, and what then happened recently, can you tell the Commissioner?

DR. NEIL:

A. The issue that came up in this Commission of Inquiry about fixation outside Eastern Health concerned me and I'm sure it concerns everybody in each individual lab outside of Eastern Health. If I had a problem with fixation in our lab, I would like to know about it. I didn't think I had a problem, I checked with our CEO, reports from 2007, all of our reports from 2007, he started--Dr. Mullen started doing specimen adequacy on his reports in 2007. We looked through, the CEO took it upon herself and I assisted her, looking through those reports to see how many of his reports were stated as being adequate, the specimen was being adequate. We had 66 reports and I hope my memory serves me correctly, 54 of those had a statement of adequacy on them. The others, I guess he didn't quite get to do that because there was

Page 55

no statement of adequacy on them. Of those 54, 52 of them were adequate. One was in a decalcification solution was really not appropriate, the other was marginal. Looking at that, I didn't think I had a problem. I was discussing one particular case on the day in question with another pathologist in our institution, he had been discussing that particular case with Dr. Mullen that day. I took it upon myself that day to confirm what I thought was true. I spoke to Dr. Mullen and I said, you know, "we have concerns that fixation might be an issue from Western Health, is that in fact true?" He replied and said, "no, we don't have a problem" which I kind of knew anyway.

COFFEY, Q.C.:

Q. Pardon me?

DR. NEIL:

A. Which I kind of knew anyway.

COFFEY, Q.C.:

Q. Which you've told us you had understood anyway.

DR. NEIL:

A. I understood from, at least looking from his

Page 56

reports that there was no issue with specimen adequacy.

COFFEY, Q.C.:

Q. Doctor, and was there anything else said at that time? I'm not suggesting there was, I'm just asking you.

DR. NEIL:

A. No, I just reiterated to him that, you know, we're sending our specimens to you, if you have a problem, if you can help us, if there's anything about our material that causes you difficulty, I expect to know. And he said, no problem, he would call me at any time.

COFFEY, Q.C.:

Q. Doctor, just while I'm thinking about it, the issues of fixation and tissue processing, okay, are you aware of whether or not Stephenville utilizes a refrigerator for in the OR there?

DR. NEIL:

A. I'm not aware, no. They probably do, but I can't tell you with certainty.

COFFEY, Q.C.:

Q. Who within Western Health would be responsible, if they should be utilizing one,

Page 57

who would be responsible for ensuring that?
DR. NEIL:
A. I would bet you a bottom dollar that there is one there.
COFFEY, Q.C.:
Q. Okay, and who is responsible, though, for ensuring that it is there.
DR. NEIL:
A. The laboratory managers are responsible.
COFFEY, Q.C.:
Q. Okay, so that's the technologist side of the institution or the organization.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, with respect to, you've used the word and we've seen it here, the "A" for adequate.
DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. As a pathologist, correct me if I misunderstand, is there such a thing as, well, from your perspective as a pathologist dealing with tissue that has been fixed and processed, it's adequate for your purposes -

Page 58

DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. But it's not perhaps optimal in the sense that it could be better done? I mean, does that, as a pathologist, is that a relatively well known idea, there are times things are adequate -
DR. NEIL:
A. I would like to see that anything that I look at is more than adequate.
COFFEY, Q.C.:
Q. Yes, and I appreciate that, but I'm just asking about the idea, are there some things--leaving aside breast tissue entirely, just as a pathologist, some specimens are better fixed than others, but that doesn't mean that the less best fixed ones can't be utilized?
DR. NEIL:
A. Yes, that's correct, if it's not well fixed, we still can make a diagnosis.
COFFEY, Q.C.:
Q. At times, you know, depending upon again -
DR. NEIL:
A. Depending on the nature of the tissue that we

Page 59

received, how much tissue is on the slide, how long it's been fixed, you can make a diagnosis, yes, but it's not something you want to continue.
COFFEY, Q.C.:
Q. Now, Doctor, when you trained here in St. John's and I take it from what you've told the Commissioner earlier that you did a short stint toward the end of your residency in Toronto.
DR. NEIL:
A. In Toronto.
COFFEY, Q.C.:
Q. Were you ever, at that time in your training when you were a resident, were you exposed to immunohistochemistry?
DR. NEIL:
A. Very briefly. The initial stage of immunohistochemistry in St. John's at that time was very limited. There were few stains that we would use for diagnostic purposes and one I remember and I think you and I talked about this before, was prostrate.
COFFEY, Q.C.:
Q. Yes.

Page 60

DR. NEIL:
A. Prostatic, you know, specific--no, it wasn't even that, prostatic acid phosphatase I think it was called at that time, I don't think we even use it anymore.
COFFEY, Q.C.:
Q. In the days of your training and your training, looking it really is the first half of the 1980s?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. Immunohistochemistry, at least locally, was just in its infancy, as it were, starting.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Do you recall who it was, was there any particular pathologist or pathologists who were into IHC, such as it was at the time?
DR. NEIL:
A. No, because there wasn't very much of it.
COFFEY, Q.C.:
Q. Doctor, you then after finishing your residency, well I'll just ask you, were you

Page 61

exposed to it in Toronto at all, do you recall?

DR. NEIL:

A. No, because I was doing hematology at the time.

COFFEY, Q.C.:

Q. And that was your particular rotation through Toronto.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Hematology. And then when you took up your position in Corner Brook, what then, if you could just recount to the Commissioner generally how over the years, if at all, you were exposed to IHC?

DR. NEIL:

A. There were more and more stains becoming available and again, these were for diagnostic purposes. Different tissues had different stains that would be required to define whether or not the tissue was, for instance, a lymphoma verses a cancer, a carcinoma and to put you down a pathway to say what this tumour might be.

Page 62

COFFEY, Q.C.:

Q. And there were more and more, as time went on -

DR. NEIL:

A. More and more as time went on.

COFFEY, Q.C.:

Q. Late 80s into the 90s, there was just more and more -

DR. NEIL:

A. More and more as time went on.

COFFEY, Q.C.:

Q. How would you become aware that a particular one or a new one was available?

DR. NEIL:

A. You sort of had to do some reading on your own, number one; and as things went on, Eastern Health would supply us with information about what stains are now available. They constantly kept changing their requisition forms, which means their listing of IHC stains that they had available, that's how we knew what they had available. You must remember that I had been around for a long time and the number of pathologists that have come and gone in Corner Brook over the

Page 63

years, there's a fair number of people. I would rely on those people, more recently trained than me, more exposed to other areas, some trained in Calgary, some trained in New York, some trained in various places in the U.S. They would come in with new knowledge, new stains, new information. I would learn from them. Anything that I--I'm talking personally now, anything that I would be unsure with regards to immunohistochemistry, I would ask my colleagues who were more experienced in that area than I was.

COFFEY, Q.C.:

Q. And if, for example, you wanted to utilize a particular new stain, how would you go about, for example in the early 90s, a new stain came along and was available and you made inquiries and you thought, okay, I've got a patient that might be useful for, how would you go about learning about well how should I interpret this, you know, what criteria are used, how do you go about it?

DR. NEIL:

A. I guess two ways. One would be, as I mentioned earlier, you talk to your clients.

Page 64

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. They've seen this before, they interpreted this before, what am I looking at, what do I need to see?

COFFEY, Q.C.:

Q. Uh-hm.

DR. NEIL:

A. The second way is you look it up in the textbook. Here's what you're supposed to see, here's some pictures. You read as much as you can about that particular stain.

COFFEY, Q.C.:

Q. Just dealing with this, as I take it, when you were a resident, there were precious few of any textbooks about IHC.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay. So, as time went on, I take it, there were texts that did become available that, at least, either dealt with IHC as a topic wholly or substantially.

DR. NEIL:

Page 65

A. Yes.
COFFEY, Q.C.:
Q. And how about journals? As time went on -
DR. NEIL:
A. Journals would talk about IHC, yes.
COFFEY, Q.C.:
Q. Particular types of stains and what one is to look for or not.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, today, the internet, I'll ask you and this will vary from individual to individual, but your own experience with the internet.
DR. NEIL:
A. The internet has a vast amount of knowledge, as we all know. Yes, there are sites on the internet that will tell you about immunohistochemistry, but I do have to say this, on particular thing about what it is we do. Immunohistochemistry is an ancillary test that is used. It is not the primary stain that is used on a daily basis, not even close. The primary stain--I look at hundreds and hundreds and hundreds of slides. They're all

Page 66

H&E slides. I don't need immunohistochemistry for the vast majority or the work that I do. We don't rely on it totally. The older pathologists and me being one of them, will tell you that your diagnostic slide is your H&E slide. Your immunohistochemistry will confirm some of the things that you should already know.

Now, a lot of the newer pathologists will be placing a little bit more emphasis on immunohistochemistry.

COFFEY, Q.C.:
Q. And in respect of ER and PR though, I take it, they are a type of IHC test that don't really fall into the category of telling what you already know.
DR. NEIL:
A. These are diagnostic tests that I'm talking about.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. ER/PR is not, is the sense that we're talking about today, diagnostic. You can use it for diagnostic purposes, yes, but it's not what

Page 67

we're talking about today.
COFFEY, Q.C.:
Q. It's primarily utilized for treatment decisions.
DR. NEIL:
A. Prognostic -
COFFEY, Q.C.:
Q. Prognostic purposes, yes. And there are, I understand, and again correct me if I'm wrong, there are more and more such stains becoming available, prognostic type IHC stains.
DR. NEIL:
A. Yes, HER2/neu being one of them.
COFFEY, Q.C.:
Q. Doctor, in terms of the internet you've indicated that you, at times, would utilize it. In Western Memorial as an institution, how long has--it's easy for people to forget, the internet hasn't always existed.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. How long has the internet been utilized at Western Memorial, like in the pathology department, like, available for people if they

Page 68

want to use it.
DR. NEIL:
A. I'm trying to give you an accurate date. I know it was there in '99. We had computers in '97.
COFFEY, Q.C.:
Q. When the internet came it, probably some time between '97 and '99.
DR. NEIL:
A. Yes. It may be before that, but it's at least that far back.
COFFEY, Q.C.:
Q. Within your institution?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And Doctor, do you participate in any medical chat rooms or bulletin boards?
DR. NEIL:
A. Certainly do.
COFFEY, Q.C.:
Q. Okay. And there's a couple of documents the Commissioner is going to be referred to. And you've been doing that for how long?
DR. NEIL:

Page 69

A. Years.
COFFEY, Q.C.:
Q. Okay. And if you wanted to know a particular query, for example, you had a particular question or questions, you could utilize those -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. - if you're involved it to -
DR. NEIL:
A. You would get a response back from anywhere in the world.
COFFEY, Q.C.:
Q. And directing you perhaps to sources of information.
DR. NEIL:
A. Or other people who would discuss the same issue.
COFFEY, Q.C.:
Q. I'll be coming to that. So, again for the Commissioner, from the perspective of a person who is in charge of the pathology lab in Corner Brook, to give her some sense of the current state of affairs is and how long the

Page 70

internet has been there, medical journals and texts for the laboratory medicine program at Western Memorial, how long have you had texts available there?
DR. NEIL:
A. Texts have always been there. With new pathologists coming and going, we always have access to new textbooks because they bring their own. And the group that are there now are very active in buying recent texts. So, texts are quite easily available.
COFFEY, Q.C.:
Q. And how about journals?
DR. NEIL:
A. Journals are available. We have a library that's attached to Memorial.
COFFEY, Q.C.:
Q. Memorial University?
DR. NEIL:
A. Memorial University, yes. Any journals that we want, any articles that we want are easily made available to us.
COFFEY, Q.C.:
Q. Okay. Doctor, within the Newfoundland and Labrador context, in the time that you've

Page 71

practised here, is there any sort of routine bulletin, as it were, you distributed to pathologists by any central agency, Memorial University's medical school for example, the Newfoundland and Labrador Medical Association, the Association of Pathologists, whatever, any group that periodically from time to time brings to pathologists or makes available to pathologists news about new developments?
DR. NEIL:
A. Specifically in pathology?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. How about other than specifically to pathology?
DR. NEIL:
A. There used to be a bulletin. It may have stopped recently, but I'm not--because I haven't seen it, from the biochemists informing us about different biochemical tests that are available in the chemistry lab. That was a regular routine.

Page 72

COFFEY, Q.C.:
Q. Okay. Doctor, I'm going to take you now to the estrogen/progesterone receptor matter in particular. When you first started practice in the mid '80s continuing into the 1990s, were you involved in ordering estrogen receptor/progesterone receptor status for breast cancer patients?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And how is that done and who handled it?
DR. NEIL:
A. That was done completely different than the way we're doing it today. It was done on frozen tissue. A small cube of tissue was removed from the fresh breast specimen, that's hard to say, taken and frozen immediately in what we call our ultra low freezer which is minus 20 I think freezer. That was transported into St. John's for biochemical analysis and that continued for quite a while.
COFFEY, Q.C.:
Q. And the ordering of this ER and PR status test, biochemical assay method, would you, as

Page 73

a pathologist, you or your fellow pathologists actually order the tests?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And the result then would go to whom?

DR. NEIL:

A. The result would come back to us and we'd again attach it to our diagnostic report and send it out as a number attached to that report.

COFFEY, Q.C.:

Q. To the attending physician, I take it.

DR. NEIL:

A. The attending physicians.

COFFEY, Q.C.:

Q. We understand that that changed in the late 1990s.

DR. NEIL:

A. Correct.

COFFEY, Q.C.:

Q. Doctor, when did you first hear about the idea of utilizing an IHC process to determine ER and PR status, yourself, when did you first hear about it?

Page 74

DR. NEIL:

A. I think it was February of '98 when I had a memo from Dr. Mahmoud Khalifa regarding the change in the way we do business. And I think you may have that memo.

COFFEY, Q.C.:

Q. Yes, we do. I'll just bring up the particular, or at least one copy of it, we have a number of copies of that particular exhibit, but if we could, please, Exhibit P-1287, a copy of it.

THE COMMISSIONER:

Q. It should be on the screen in front of you, Doctor.

COFFEY, Q.C.:

Q. Now, Doctor, yourself, do you actually have the original copy?

DR. NEIL:

A. I have, yes.

COFFEY, Q.C.:

Q. And I gather you -

DR. NEIL:

A. I think that might be mine because I can see the dots in the corner -

COFFEY, Q.C.:

Page 75

Q. Pardon me?

DR. NEIL:

A. - where I had it pinned on my bulletin board.

COFFEY, Q.C.:

Q. Yes. Doctor, I'm just going to ask you about this, this is a memo of February 16th, 1998. It's to all Newfoundland pathologists from Dr. Khalifa and the subject is reference reporting of estrogen and progesterone receptor immunohistochemical results. Now, Doctor, did you know who Dr. Khalifa was prior to this?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And how did you know who was he and how did you come to know him?

DR. NEIL:

A. He worked at the Health Science. He actually did a locum for us at one particular point in time. So, I knew him very well.

COFFEY, Q.C.:

Q. That was before--he done the locum before February of '98 or was it after?

DR. NEIL:

Page 76

A. I honestly don't remember when he came, but I know we did have him for a while.

COFFEY, Q.C.:

Q. And you say you know him well, what's your understanding of his background? What was your understanding, you know, in the late '90s as to his background?

DR. NEIL:

A. Dr. Khalifa is a well rounded, experienced pathologist who I respected, an excellent teacher. I have all confidence in his abilities as a pathologist.

COFFEY, Q.C.:

Q. And did you have any heads up that this memo was coming?

DR. NEIL:

A. No, not that I can remember.

COFFEY, Q.C.:

Q. Okay. Doctor, when you received this memo and I take it, you would have read it and not long after then you pinned it to a bulletin board where it remained.

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Page 77

Q. Had you known that there was any kind of study or organizational approach going on with any, well, it would have been then the Health Care Corporation of St. John's in relation to bringing in ER/PR IHC?

DR. NEIL:

A. I wasn't aware of what was going on?

COFFEY, Q.C.:

Q. Okay. So, you received this memo and you read it, what did you think and what did it cause you to do?

DR. NEIL:

A. Well, we knew we had to change our way of doing business. The memo is quite explanatory as to how to do that. It is quite clear of how you report. It is my assumption because this is addressed to all Newfoundland Pathologists, that we all saw it. We had to develop a protocol of reporting based on Dr. Khalifa's recommendations. We looked at his examples of how to report and really went with that totally, his recommendation as to how to report on our written reports that we send out to physicians and we report exactly, reported at the time, exactly as it says here, using

Page 78

both of those examples. And we actually included, if you look at example 2, we actually would include that comment and did for quite while.

COFFEY, Q.C.:

Q. When you received this memo, did you contact anyone about it?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. So, accepted, from your perspective that this would be the way to do things in the future.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Doctor, at that time, February of 1998, who was in charge of the pathologists in Corner Brook?

DR. NEIL:

A. It would have been Dr. Valiente. That's before my time, '98 I started and he was my predecessor.

COFFEY, Q.C.:

Q. So, February of 1998 he was in charge.

DR. NEIL:

Page 79

A. Correct.

COFFEY, Q.C.:

Q. You were -

THE COMMISSIONER:

Q. I'm sorry (inaudible) again.

DR. NEIL:

A. Valiente.

COFFEY, Q.C.:

Q. And you took over in -

DR. NEIL:

A. As director, in November.

COFFEY, Q.C.:

Q. Of that year?

DR. NEIL:

A. Same year.

COFFEY, Q.C.:

Q. Doctor, just looking at this memo, if I could, phase 2, he writes, "each pathologist would be asked to report results of his/her own case as indicated by the brown staining of nuclei of the invasive neoplastic cells". And this nuclei staining, at that time, how many stains utilized nuclei staining, do you recall? Were there many or few, in terms of your own experience. I'm not suggesting, you know, in

Page 80

theory how many there were, but within Corner Brook.

DR. NEIL:

A. There were some that were nuclei, some that were cytoplasmic.

COFFEY, Q.C.:

Q. Okay. This wasn't the first time you'd seen a reference to nuclei staining?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. That's what I'm really -

DR. NEIL:

A. No, that's not the first time, no.

COFFEY, Q.C.:

Q. Okay. And he goes on to say, "this phase will start March 1, 1998 at which time your immunostain slides will be mailed back to you with positive controls whenever it is technically possible. With each run I will still be responsible for reviewing the positive controls here in our laboratory and the slides will not be mailed to you unless adequate staining is noted in the positive controls. As we are all interested in making

Page 81

this transition as smooth as possible, I will be more than glad to continue be available to answer any questions and address concerns". And then he talks about discontinuing the biochemical assay and refers to "attached please find a proposal for uniform reporting of ER/PR immunohistochemical staining". And this proposal was discussed and he talks about that and you've indicated that in Corner Brook, it was adopted.

DR. NEIL:

A. We adopted it.

COFFEY, Q.C.:

Q. Doctor, in phase two, that paragraph, the reference to "will be mailed back to you with positive controls whenever it is technically possible", which types of controls did you understand that to be?

DR. NEIL:

A. External controls.

COFFEY, Q.C.:

Q. And that would be an external positive control for ER and external positive control for PR.

DR. NEIL:

A. Correct.

Page 82

COFFEY, Q.C.:

Q. Separate slides.

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. And what did you understand by the sentence, "with each run I will still be responsible for reviewing the positive controls here in our laboratory and the slides will not be mailed to you unless adequate staining is noted in the positive controls".

DR. NEIL:

A. I think that statement is quite clear.

COFFEY, Q.C.:

Q. And you understood -

DR. NEIL:

A. I understood that we would not be getting slides that did not have positive controls.

COFFEY, Q.C.:

Q. And that would be either--would you be getting positive controls all the time or some of the -

DR. NEIL:

A. No, we wouldn't get positive controls all the time. Controls are run as batches.

Page 83

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. And I'll explain that a little bit.

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. The batch could have a run with a test case from Corner Brook, a test case from Gander, a test case from Eastern and they'd be run the same day. The positive control, there'd be a positive ER control, a positive PR control run with those three test samples. You can't send a control to every place in the province. Sometimes we would get it; sometimes Grand Falls would get it; sometimes it would stay with Eastern. We were told that we wouldn't get any slides unless they were positive controls.

On occasion and probably more than several occasions, we would see written on the requisition that came back, controls are positive, indicated.

COFFEY, Q.C.:

Q. Yes, I was going to ask you about that because

Page 84

in getting the block and sending it off, I haven't asked you about how it worked in the St. John's, I'll take you to that now. The requisition you referred to earlier, requisition forms allowed for different types of stains, ER/PR were two of them.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Requisition will be prepared, set off with the block.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. When the slides came back with the block and the requisition, at times -

DR. NEIL:

A. And the test slide.

COFFEY, Q.C.:

Q. Yes, and the test slide, the requisition would have written on it things like references to positive controls.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Page 85

Q. And I'll be referring you to some of those as examples, okay.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. So, Doctor, and just so the Commissioner understands, I take it then that overall from you perspective as a practising pathologist in Corner Brook at the time, February of '98 going into March '98, that okay, this is what's required, this is the new regime. And you and your fellow pathologists were going to participate and follow exactly what Dr. Khalifa suggested.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And with the proviso understanding as he said here that you understood he would not let slides leave without the positive controls having been read from--as certain to be positive from his perspective, Dr. Khalifa's.
DR. NEIL:
A. Quite clear.
COFFEY, Q.C.:

Page 86

Q. Yes, and I appreciate that and it appears to be. So, in the instances when you would get the external controls yourself, despite his assurance, would you actually look at the external controls?
DR. NEIL:
A. If we had controls, we looked at them.
COFFEY, Q.C.:
Q. Did you ever notice any problem with them?
DR. NEIL:
A. I can't say that I did. I remember--I didn't see a lot. We our numbers of ER/PR cases over the years averaged from 40 a year, divide that among three, four pathologists, how many do you see a year?
COFFEY, Q.C.:
Q. I was going to ask you about that for the Commissioner. So, -
DR. NEIL:
A. On a personal basis.
COFFEY, Q.C.:
Q. Yes, Corner Brook itself would have about how many breast cancer cases a year?
DR. NEIL:
A. We would have about 40 cases of ER/PR requests

Page 87

per year, an average of 40.
COFFEY, Q.C.:
Q. Has that been fairly steady?
DR. NEIL:
A. It has been.
COFFEY, Q.C.:
Q. Going back from this time, from 1998 -
DR. NEIL:
A. Yes, it has been.
COFFEY, Q.C.:
Q. And so that's 40 a year and if there are four of you there -
DR. NEIL:
A. That's ten each.
COFFEY, Q.C.:
Q. And I take it, it's no one or two pathologists did breast cases.
DR. NEIL:
A. No, we all did the same. So, that's about ten each.
COFFEY, Q.C.:
Q. A year.
DR. NEIL:
A. Which is about once a month, no more than one or two a month.

Page 88

COFFEY, Q.C.:
Q. And if there were three of you, there would be 36 and about one a month then.
DR. NEIL:
A. But now we have five people, so it's a very few, that's the point.
COFFEY, Q.C.:
Q. Yes. And Doctor, you understood that you were to be looking for nuclei staining of invasive neoplastic cells which I take it is tumour cells?
DR. NEIL:
A. Um-hm.
COFFEY, Q.C.:
Q. The idea of reporting them as percentages, prior to February of 1998, do you recall if there were any analysis that you were conducting as a pathologist where you had to report a percentage?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. This was the first kind of percentage.
DR. NEIL:
A. This was the first percentage.

Page 89

COFFEY, Q.C.:
Q. It's not the first nuclei staining cases, but it is the first percentages.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. What, if anything, did you understand about how you were to do that? I mean, physically and the mental process, how were you to do that?
DR. NEIL:
A. You look at your test case, make an estimate of the number of nuclei that were staining in that whole sample, that was before you on a microscope.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. It's an estimate, it's a best guess estimate.
COFFEY, Q.C.:
Q. So how would you -- your own practice was to do what physically, mentally, as you did this? The slides would come back from St. John's. What would you actually do?
DR. NEIL:

Page 90

A. You take the slide, the test slide, scan it, see how much -- you can actually look at the H & E slide first to get a better appreciation of the tumour.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. You can see it better in the H & E slide. Get a good appreciation of what is on that H & E slide, take your test slide with the ER staining, and appropriately again after looking at the ER slide, the PR slide. Get an estimate percentage, and that's all it is, a percentage, the percentage of tumour cells that have brown nucelli. Could be ten, 20, 30, 40, 50, whatever the case may be. You go with that number.
COFFEY, Q.C.:
Q. And that's the percentage, that's the -
DR. NEIL:
A. That's the percentage.
COFFEY, Q.C.:
Q. That would be filled in in the appropriate space?
DR. NEIL:

Page 91

A. Filled in the appropriate space.
COFFEY, Q.C.:
Q. Doctor, your fellow pathologists -- now that was the process you were following in 1998/1999. Do you know what process they were following?
DR. NEIL:
A. I can only assume it was the same process.
COFFEY, Q.C.:
Q. So was it ever discussed, do you recall, as to how we go about this?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. I can only assume it was the same process. It's an estimate of the number of brown staining nucelli in invasive cells as Dr. Khalifa outlined in his memo.
COFFEY, Q.C.:
Q. Doctor, you've referred to it today certainly, the approach is to ensure there's normal tissue, normal breast tissue, therefore, to utilize this internal control.

Page 92

DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. In 1998, when you first got slides involving ER and PR, did you know -- were you looking for internal controls?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. And did you know about the idea of utilizing internal controls in ER and PR?
DR. NEIL:
A. Internal controls exist in pathology in general because there are other stains besides ER/PR immunohistochemical stains. So they do exist in pathology. When I received this memo, it clearly stated positive controls, didn't say anything about internal controls. In my practice of pathology over 20 odd years, we always relied on external controls. There was always an external control. It didn't make a difference what slide you were looking at or what particular stain you were looking at, there was always an external control. My emphasis was on the external control.

Page 93

COFFEY, Q.C.:
Q. You didn't know to look for the internal control at the time?
DR. NEIL:
A. It didn't -- it wasn't a focus for me.
COFFEY, Q.C.:
Q. Were you aware of it, that it was utilized in ER and PR at that time?
DR. NEIL:
A. I can't say that I was.
COFFEY, Q.C.:
Q. What's your first memory of really becoming aware of it?
DR. NEIL:
A. My first memory of becoming aware of it, became acutely aware of it, was when I received another memo from Dr. Ejeckam.
COFFEY, Q.C.:
Q. Okay, and we'll come to that.
DR. NEIL:
A. In 2003.
COFFEY, Q.C.:
Q. We'll come to that and talk about it, okay.
DR. NEIL:
A. Okay.

Page 94

COFFEY, Q.C.:
Q. So in choosing -- at the time in 1998, and perhaps I'll take you to a particular exhibit. This is just a representative example, okay, that's all. If we would bring up, please, Exhibit 2226, please, and this, Doctor, is on Western Health's stationary. It names four doctors to the left hand side. If the Commissioner is wondering about the spelling, Dr. Valiente's name is there.
COMMISSIONER:
Q. I wasn't too far off. I gave him a double "l" though.
COFFEY, Q.C.:
Q. Yourself, Dr. Kulaga and --
DR. NEIL:
A. Godlewski.
COFFEY, Q.C.:
Q. Godlewski. You were, I take it, the four pathologists of the day in April of 1998.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. This is April 8th, 1998. It's written to Dr. M. Khalifa. I take it there's probably two

Page 95

patients referred to here, two surgical numbers, and two different blocks, Block 4 and Block 6. It's written, "Dr. Khalifa, please find enclosed copy of path reports on blocks in the above cases. These are being referred for ER and PR receptor assays. Please return blocks and comments on completion of these cases". It's signed "Pathology, Pathology Department. I want to ask you about that, Doctor, because the idea of signing "Pathology Department", I take it at that time it was just -- there's no particular doctors name here.
DR. NEIL:
A. No, this is a -- we instruct our secretary to send these blocks and this is a form letter that she used.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. So she didn't sign her own name, she signed pathology.
COFFEY, Q.C.:
Q. And, for example, the idea here, check computer Monday morning, and this name here is

Page 96

M. Butler, April 14, '98, and we understand this is Mary Butler?
DR. NEIL:
A. Could be Mary, yes.
COFFEY, Q.C.:
Q. Okay, and you know who Mary is?
DR. NEIL:
A. I know Mary.
COFFEY, Q.C.:
Q. You know Mary?
DR. NEIL:
A. Yes, I know Mary.
COFFEY, Q.C.:
Q. What would this signify here in this context, April 14, '98? Would that be coming back perhaps or arriving, or do you know?
DR. NEIL:
A. I don't honestly know. If you'd go back to the date -- I think she said it was the 14th, and we sent it on the 8th. It's probably that she's received it and done it.
COFFEY, Q.C.:
Q. And I take it, Doctor, that this would be one of the earlier cases for ER/PR request from Corner Brook?

Page 97

DR. NEIL:
A. That's correct.
COFFEY, Q.C.:
Q. For IHC. Now, Doctor, we don't know here whose particular patients these were and it doesn't, from my perspective -- it's not of particular interest to the Commission, except in relation to what would then happen when this first wave back in '98 would come to you, these -- I shouldn't say "wave" because it would be one or two a month at most sets of slides. What would you do, this process you talked about going through?
COFFEY, Q.C.:
Q. Those slides would come back to the appropriate pathologist who owned the particular case. They would look at the ER slide, the PR slide, do their estimate, as we've discussed, would document what the number is and the number would be entered into our pathology report as an addendum based on the recommendations from Dr. Khalifa's letter.
COFFEY, Q.C.:
Q. Now, Doctor, if we could, please, Exhibit P-2227. Now, Doctor, again this is just -- it's

Page 98

a pathology report from Western Memorial Regional Hospital. It relates to a 1998 case, and again it's -- from our perspective, it's to get some sense of how things were being reported.
DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. In relation to ER/PR around that time. Now here this particular one on page two of the exhibit is a reference to estrogen receptors, negative, 0 percent of neoplastic cells; progesterone receptors, negative 0 percent of neoplastic cells.
DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. Now, Doctor, 18/02/98, I take it, would be February 18th, 1998?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Which is just, in fact, two days after Dr. Khalifa's memo. Do you know if there were, in fact, ER/PR results using the IHC method being

Page 99

reported to Corner Brook?
DR. NEIL:
A. Before -- you're right.
COFFEY, Q.C.:
Q. I was just going to ask because --
DR. NEIL:
A. Right, because we did have some in '97. Dr. Khalifa was reading them.
COFFEY, Q.C.:
Q. Okay, because I had asked you about that earlier. Upon reflection now, you remember now --
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Looking at this that in the early stages before yourself and your fellow pathologists in Corner Brook were actually engaged by the memo to do the reading yourself --
DR. NEIL:
A. Dr. Khalifa was reading them.
COFFEY, Q.C.:
Q. Dr. Khalifa had been reading them.
DR. NEIL:
A. By himself, and he did that correlation

Page 100

between the biochemical and the IHC.
COFFEY, Q.C.:
Q. Which is referred to in his memo?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. In fact, that correlation process.
DR. NEIL:
A. Yes, he was reading them himself.
COFFEY, Q.C.:
Q. So you would have received a report, you or whomever of your fellow physicians, would have received a report back in 1998, and this sort of entry would be dictated?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, I do here -- just because this particular patient, there's a reference to October 25 '05, ER/PR recall IHC blocks, Roman numeral VI, I H & E slides.
DR. NEIL:
A. Right.
COFFEY, Q.C.:
Q. And we will be coming to this shortly, but

Page 101

this sort of entry for these retest cases in 2005, was this done routinely for Corner Brook patients, this sort of entry?

DR. NEIL:

A. When it was sent back for retest was recorded.

COFFEY, Q.C.:

Q. Within the patient's chart?

DR. NEIL:

A. Within the patient's report.

COFFEY, Q.C.:

Q. Meditec report.

DR. NEIL:

A. This is not Meditec, by the way.

COFFEY, Q.C.:

Q. Okay, it's not?

DR. NEIL:

A. This is -- no, this is a very primitive computer program that we were using before Meditec. So this is really the only way that we could enter it.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. To record it.

COFFEY, Q.C.:

Page 102

Q. Okay, so you've been utilizing Meditec now for --

DR. NEIL:

A. Since '99.

COFFEY, Q.C.:

Q. Since '99, but pre-dating that, this was the primitive computer --

DR. NEIL:

A. Computer program we used.

COFFEY, Q.C.:

Q. But even then in 2005 when you were in the position where you had to go back and look at patient's records before '99 --

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Which this is one of them, you went back and entered this in the original primitive computer --

DR. NEIL:

A. Well, it's a program.

COFFEY, Q.C.:

Q. I appreciate it's a --

DR. NEIL:

A. Program.

Page 103

COFFEY, Q.C.:

Q. Program. I appreciate being corrected on this is actually not Meditec itself.

DR. NEIL:

A. It's not Meditec.

COFFEY, Q.C.:

Q. It did look -- the format did look different. Doctor, there's a reference here for this particular patient, April 5, 2006, Block 12 sent directly to Mount Sinai for ER/PR recall.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. So I take it at times for some patients blocks got sent directly to Mount Sinai?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And we'll be coming to that, but even that would be recorded in the patient's --

DR. NEIL:

A. Everything is recorded.

COFFEY, Q.C.:

Q. Original computer chart.

DR. NEIL:

Page 104

A. Yes.

COFFEY, Q.C.:

Q. For '98 and '99 or in Meditec after '99?

DR. NEIL:

A. Yes, correct.

COFFEY, Q.C.:

Q. And then there's a note as well, report received April 11, 2006. See that? Doctor, the reference here to three names, they're redacted, but they're all MDs, what was the practice or what is the practice in Corner Brook vis a vis signing these sorts of pathology reports? Would all doctors names go on them, or how does that work?

DR. NEIL:

A. As I mentioned to you, this is a primitive program.

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. This program could only accept three names. So if this were my case, I would just tick my name and sign it.

COFFEY, Q.C.:

Q. Okay.

Page 105

DR. NEIL:
A. There were four people at the time. We had to tweak the system. If my name wasn't there, the secretary would be able to put it there.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. When I say "primitive", I mean primitive.
COFFEY, Q.C.:
Q. Doctor, the idea of putting three or four names -- if the patient happened to be yours, and I'm not suggesting this particular patient was, but if it happened to be your patient, what's the practice now, would it be just your name or everybody in the department's name?
DR. NEIL:
A. Three names would be there, but one person would sign their name. Remember physician's signatures can't always be read.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. So you could tick your name and scratch, and you'd know.
COFFEY, Q.C.:

Page 106

Q. So what would be the significance then of having three or four names there? Why --
DR. NEIL:
A. Our department had at the time three or four people, and we wanted to make sure that -- it's like a form letter with the appropriate -- I wanted to have the four names there, but the system couldn't take four names.
COFFEY, Q.C.:
Q. Okay, and to signify whose patient it was, he or she would have to initial or sign or --
DR. NEIL:
A. You'd sign it.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. Physically put pen to the paper.
COFFEY, Q.C.:
Q. Which would signify that, in fact, it is that particular doctor's patient?
DR. NEIL:
A. Yes. I know who owns this.
COFFEY, Q.C.:
Q. Yes, and again it's not -- I'm not going to ask you. In particular, this -- Doctor, as

Page 107

well here, I take it, on the third page there's a note here, "This case was sent directly to Mount Sinai Hospital, Toronto, Ontario, as part of ER/PR retesting and report is as follows", and I take it this is the verbatim report?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. From Dr. Mullen, and continue on into the fourth page, there's a note here -- in fact, it ends, I take it, because the -- not only have you got the report from Dr. Mullen verbatim, but you've also got the diagnosis which he included in his reports?
DR. NEIL:
A. He always does.
COFFEY, Q.C.:
Q. Yes, and you've got, "Dr. Paul Neil for Dr. Brendan Mullen", and April 24, 2006, there's a note that a particular block is returned, and May 12, 2006, slides sent to St. Clare's Mercy Hospital on request of Dr. Cook and Dr. Denic, total slides sent, 12 slides. So, Doctor, you say that any time patient's slides or blocks

Page 108

were sent anywhere, it was recorded in their chart, as it were, whether it's the older program or Meditec?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. And that's the practice in Corner Brook?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And if it was received back --
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. It's also recorded?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. If we could, please -- Doctor, then after the process of reporting your own cases in 1998 kind of got up and running, in terms of ER and PR, did you ever have any concerns about your reporting of ER/PR, any issues ever brought up, you know, that you became aware of in Corner Brook, you know, the quality of the

Page 109

slides you were getting?
DR. NEIL:
A. I didn't have, personally, concerns.
COFFEY, Q.C.:
Q. Did you know if anybody else within your office?
DR. NEIL:
A. On a rare occasion, I have had comments from two of our pathologists.
COFFEY, Q.C.:
Q. Do you recall who they were, those pathologists?
DR. NEIL:
A. Yes, I do, Dr. Luer and Dr. Karn.
COFFEY, Q.C.:
Q. Yes, and do you recall what the nature of those comments was?
DR. NEIL:
A. General comments to say that this particular--the slides, the slide quality is not as good as we would like, and I did speak to them about that and I can't be more--they can't and I can't be any more specific than that.
COFFEY, Q.C.:
Q. Doctor, have yourself or either--are those two

Page 110

doctors still there?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay. Have yourself or either of those two physicians gone back to look at their original--try and see if they could find some original reports where they recorded those comments, do you know?
DR. NEIL:
A. Not to my knowledge.
COFFEY, Q.C.:
Q. Okay. With a view to trying to ascertain what exactly it was, you know, two or three or four years later, "why I had a concern about the quality of a particular slide?"
DR. NEIL:
A. Could they tell me?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. I don't think so.
COFFEY, Q.C.:
Q. Okay. Now when this would arise, I take it were you actually then in charge at the time?

Page 111

DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Do you recall was it pursued in any way?
DR. NEIL:
A. My comment to anybody and to both of them, if you have a difficult--if you have difficulty with any slides that you're receiving from an outside institution, pick up the phone, call the technologist who did it, talk to him or her. If you're not satisfied with that, talk to the person in charge. Remember, my experience in immunohistochemistry is not technical. The technical aspect would come from Eastern Health. Those were my instructions to both of them.
COFFEY, Q.C.:
Q. And did you ever recall hearing back from them?
DR. NEIL:
A. No. I assumed things were fine.
COFFEY, Q.C.:
Q. Doctor, in relation to those two physicians, are they of a younger or more recent--younger generation, more recent training than

Page 112

yourself?
DR. NEIL:
A. They're probably watching me.
COFFEY, Q.C.:
Q. It is what it is.
DR. NEIL:
A. It is what it is. Dr. Karn started with us in 1999.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. He's younger than I am. Dr. Luer started with us much later, but he's older than me.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. So he's--Dr. Karn has a lot of experience in other parts of the world. Dr. Karn's experience is--his working experience is in Corner Brook.
COFFEY, Q.C.:
Q. His?
DR. NEIL:
A. His working experience is in Corner Brook.
COFFEY, Q.C.:

Page 113

Q. Is in Corner Brook, okay.
DR. NEIL:
A. He trained in Calgary.
COFFEY, Q.C.:
Q. Okay. So did you have any understanding that they may have been exposed to IHC, ER/PR slides elsewhere before they arrived in Corner Brook?
DR. NEIL:
A. I think they probably did.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. But I can't be entirely sure of that.
COFFEY, Q.C.:
Q. And anytime--your recollection, at any time either of them raised it with you around the office, the concern they had, you directed them to take it up with the people who created the slides?
DR. NEIL:
A. Yeah, and remember now, this is only one occasion with each person, one occasion.
COFFEY, Q.C.:
Q. Okay, one with each, and the time frame, you

Page 114

don't -
DR. NEIL:
A. I don't think it had anything to do with ER/PR and it was a while ago.
COFFEY, Q.C.:
Q. Exhibit--if we could, we have a new exhibit, Commissioner. I believe it's Exhibit P-2271. It's kind of an organizational listing that was provided by Dr. Neil's counsel this morning.
THE COMMISSIONER:
Q. Exhibit P-2271 entered.
EXHIBIT ENTERED AND MARKED P-2271
COFFEY, Q.C.:
Q. And if we could bring that up, please? Doctor, I take it that this is a--it's in your handwriting?
DR. NEIL:
A. Yes, it is.
COFFEY, Q.C.:
Q. Okay, and this is an organizational chart by way of chronological time in Corner Brook as a physician, a pathologist?
DR. NEIL:
A. It's a time line of pathologists who have come

Page 115

and gone.
COFFEY, Q.C.:
Q. And we see--you've got a--I take it the second, the longest line.
DR. NEIL:
A. No, no, I have the third line.
COFFEY, Q.C.:
Q. Third?
DR. NEIL:
A. Dr. Dimakulangan
COFFEY, Q.C.:
Q. Oh, yes.
DR. NEIL:
A. Dr. Dimakulangan had the top line.
COFFEY, Q.C.:
Q. Top line, and was it -
DR. NEIL:
A. And I think his line is actually--his line was actually the longest. But Dr. Valiente was very close.
COFFEY, Q.C.:
Q. These go back to 1975 anyway, these two physicians at the top. We have yourself there in '87, January of '87, and okay, Doctor, let me see, the two physicians that on a single

Page 116

occasion each spoke to you are Dr. Luer?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Which is here, which would mean Dr. Luer started October 21st, 2002?
DR. NEIL:
A. That's correct.
COFFEY, Q.C.:
Q. And continues there. So any such conversation would have had to have been after that?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And the other doctor is Doctor?
DR. NEIL:
A. Dr. Karn.
COFFEY, Q.C.:
Q. Karn is up here.
DR. NEIL:
A. He started in October 5/98.
COFFEY, Q.C.:
Q. Okay, and so any of the--the comment about or the slide quality, could have been any time since then really?

Page 117

DR. NEIL:
A. It could have been, but it was probably around the time that Dr. Luer was there as well.
COFFEY, Q.C.:
Q. Okay. So that would be then since October of '02?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, I'm going to go--actually, Commissioner, if we're going to break for the morning, I think it's about 10 past 11.
THE COMMISSIONER:
Q. Um-hm.
COFFEY, Q.C.:
Q. If we could do that now, because I'm going to go on to Dr. Ejeckam's memo, so I'd like to break now.
THE COMMISSIONER:
Q. Sure, yes, all right. We'll take a 15-minute break.
(RECESS)
THE COMMISSIONER:
Q. Please be seated. Mr. Coffey.
COFFEY, Q.C.:

Page 118

Q. Thank you, Commissioner. There are a couple of exhibits that there are references in them that I want to refer you to, Doctor. They don't involve Western, but there are some subject matters. If I could, please, Exhibit P-1857? Now Doctor, these are, in particular, page two and three, are minutes of an anatomical pathology site chiefs meeting back in June 17th, 1997, and participants are Dr. S. Parai, M. Khalifa, Dr. Cook, Don Cook, and Mr. J. Murphy and apologies from other physicians, but in particular, Doctor, on this next page, paragraph 3.4 says "ER and PR receptor interpretation. This was discussed in detail. The majority of pathologists at St. Clare's, as well as the Grace Hospital, would like to interpret their own cases with control slides. Dr. Khalifa has agreed to provide a number of cases to the Grace Hospital to review them to be familiar with the positive and negative results." And Doctor, in relation to a question I had asked you earlier then, the idea then--because I'm going to ask you about the February 1998 memo from Dr. Khalifa, you had indicated that

Page 119

initially it was the first you could recall of it, but then upon reflection, you thought well, in fact, Dr. Khalifa had already been reporting them for a while?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. The idea that's raised here, back in June of 1997, that the majority of pathologists, in particular--a particular site, St. Clare's and the Grace, would like to interpret their own cases involving ER and PR receptors, was Corner Brook ever consulted about whether or not they wanted to get involved in the sense of -
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay, I just wanted to--because it was alluded--well, not alluded to, it's referred to here, and your memory is though that didn't--you weren't consulted one way or the other about it?
DR. NEIL:
A. The date here is '97?

Page 120

COFFEY, Q.C.:
Q. Yes, this is June of 1997.
DR. NEIL:
A. Now I wasn't in the position that I'm in today in '97.
COFFEY, Q.C.:
Q. I appreciate that, yes.
DR. NEIL:
A. Dr. Valiente was there and I think that he would have discussed it with me, if he had been contacted.
COFFEY, Q.C.:
Q. Yes. I think you were the -
DR. NEIL:
A. Associate.
COFFEY, Q.C.:
Q. - associate, yes.
DR. NEIL:
A. Yes, he would have discussed it with me if he had been contacted.
COFFEY, Q.C.:
Q. Exhibit P-1870, please? Doctor, this is a memo to Provincial Laboratory Directors, the Program Director at Laboratory Medicine Program, and Divisional Managers, Division of

Page 121

Anatomy Pathology, from Dr. Cook, April 27th, 2000.

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. And it involves HER2/neu expression as the subject, and now would this sort of memo ever have gotten to yourself?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And this is effective April 1, 2000. "Pathologists at the Health Care Corporation of St. John's have begun reporting of HER2/neu over expression" and it refers to the details of it, and he continues and concludes by saying, in the last paragraph, "we will be able to perform HER2/neu immunoperoxidase stains on paraffin blocks on cases referred in. Once the stains are completed, both the paraffin blocks and the slides will be referred back to your hospital. At this point in time, reporting of HER2/neu over expression will be the responsibility of the pathologist who ordered the stain. It is also recommended

Page 122

that for evaluation of breast biopsies for HER2/neu over expression the biopsies should be fixed overnight for at least 18 hours."

Doctor, do you recall how is HER2/neu then developed, in terms of reporting, from Western's perspective? Did you get involved in such reportings?

DR. NEIL:

A. I'd actually forgotten we did this, but yeah, the stains were completed and the paraffin blocks and the slides were referred back to our hospital. Again, there were very, very, very few of these. There were some instructions that did come back with it.

COFFEY, Q.C.:

Q. The actual--as to how they should be reported, how they should be interpreted and reported?

DR. NEIL:

A. Yes, there was a kit with kit instructions that came back, and it went something like one plus, two plus, three plus. So yes, it was there, and we did it, but like I say, it was very, very sparse, numbers that we did.

COFFEY, Q.C.:

Q. And Doctor, here, in fact, if you just look at

Page 123

the memo itself, there's a reporting -

DR. NEIL:

A. Yes, I remember this.

COFFEY, Q.C.:

Q. - format suggested there. The reference to--because I take it the--would the HER2/neu be ordered on the same blocks as the ER/PR?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And there's a reference here, "the biopsy should be fixed overnight for at least 18 hours."

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. Do you recall--or what, if anything, was your understanding, as of April 2000, as to what sorts of time is required for fixation, for example, for ER and PR?

DR. NEIL:

A. Fixation is important for any large--for any tissue.

COFFEY, Q.C.:

Q. Yes.

Page 124

DR. NEIL:

A. Most especially for larger tissues, and longer times are required. More formalin is required for larger tissues. So to be specific about ER/PR versus any other standard specimen that we receive, fixation is of vital importance to any tissue.

COFFEY, Q.C.:

Q. Now this refers to 18 hours, in particular.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. For at least 18 hours. Was there any procedure in place to ensure that a particular--like for example, a breast specimen was fixed for at least 18 hours?

DR. NEIL:

A. If this is referring to a large specimen, it would be fixed overnight.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. Which is within the time frame of 18 hours.

COFFEY, Q.C.:

Q. But is there any actual procedure in place to

Page 125

ensure that it is 18 hours or more? Even to this day, do you know if there's any procedure in place?

DR. NEIL:

A. Well, we do have specimen fixation protocols from Eastern Health that we talked about earlier this morning.

COFFEY, Q.C.:

Q. Okay, so whatever they specify is what's being followed now?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Exhibit P-1874? Now Doctor, this is Division of Anatomic Pathology, minutes of meeting of February 22nd, 2001. It involves the Health Care Corporation of St. John's, but at page three of the exhibit, page three of the underlying minutes, under new business continued, "4.2 Quality Control of immunoperoxidase staining. There's been a study going on the quality--a studying going on," I presume it should say, "on the quality of immunoperoxidase staining for both sites," and this would be, in this context, the

Page 126

General Hospital and St. Clare's. "It is agreed the control for immunoperoxidase staining be run for every batch. A pathologist will check on the control slide before sending the slide to the other site. Dr. S. Parai has agreed to do this. In case he is not available, another pathologist will be looking at the control."

Now this, I gather, in the context here, is quality control of immunoperoxidase staining in general, that's what this refers to?

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. Were you ever made aware, in February, January, February, March of 2001 that this sort of a study was going on?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Until 2003, Dr. Ejeckam's memos, were you ever made aware of any concerns from St. John's about immunoperoxidase staining?

DR. NEIL:

Page 127

A. No.

COFFEY, Q.C.:

Q. Exhibit P-1876 please? Now, Doctor, these are again minutes of a meeting of site chiefs and divisional managers, this is at Health Care Corporation of St. John's, April 25th, 2001. And under "Business Arising" paragraph two, "quality control immunoperoxidase staining generally the immunos appear to be very good, there appears to be some problems with the estrogen and progesterone receptors. Positive controls are checked daily by a pathologist; however, these need to be documented. Dr. Parai will follow up on this. Note is also made of heavy utilization of immuno services and high volumes encountered." So I take it this was not brought to your attention either?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. And under "New Business", paragraph two, "terminology of estrogen and progesterone reports. Mr. Gulliver will develop a Canned Text for reporting of estrogen and progesterone receptors. Information for this

Page 128

will be obtained from Dr. Parai." I appreciate you had heard from Dr. Khalifa in the format back in '98.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Did you ever hear about any suggested changes to ER/PR reporting formats or Canned Text after that.

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. That was until 2005, I take it?

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. And, Doctor, if we could, Exhibit P-1877. Doctor, these are minutes of site chiefs and divisional managers' meeting of June 26th, 2001 for the Health Care Corporation of St. John's, page, that's the agenda, page two of the minutes, and I apologize, page two of the minutes. And paragraph 3.2, labelled "HER2 expression, ER/PR control" the text reads here, "The controls for all these

Page 129

immunostaining are checked by the site chief or by on call pathologist when site chief is not available." Okay?

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Now, Doctor, I want to ask you about this because by this point, that is by 2001, certainly Dr. Khalifa had been gone for awhile, you would have been aware that Dr. Khalifa left around '99, 2000?

DR. NEIL:

A. I'm not sure when he left.

COFFEY, Q.C.:

Q. But you would have been generally aware at some point that he had gone.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. When he left, what was your understanding about this assurance given back in February of 1998 concerning the controls being checked, the external controls being checked? And we talked about that earlier. When you learned that Dr. Khalifa had gone, did you make any

Page 130

assumptions about that whether there was somebody replacing him and checking the controls?

DR. NEIL:

A. I assumed that someone took his work.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. And did his job.

COFFEY, Q.C.:

Q. And on that point, Doctor, I take it then that the assurance given in February of '98 in that memo.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. You didn't see that as a personal assurance so much as the person in his position?

DR. NEIL:

A. Yes, correct.

COFFEY, Q.C.:

Q. It wasn't so much Dr. Khalifa per se, as is Dr. Khalifa as site chief at the time?

DR. NEIL:

A. As the person doing the job at that particular

Page 131

time, not necessarily Dr. Khalifa.

COFFEY, Q.C.:

Q. Were you ever made aware, Doctor, do you recall in June 2001 or in 2001 that there was at least a recognition that the site chief or the pathologist on call was in effect, checking these controls?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. That they had referred to this--the point I'm getting at, is that there was no assurance kind of sent out that you recall to everybody, Khalifa is gone, but we're still doing this?

DR. NEIL:

A. No, there was no assurance sent out.

COFFEY, Q.C.:

Q. If I could, please, Exhibit P-0113 please? Now, Doctor, this is Dr. Ejeckam's memo of April 4, 2003 and the Commissioner has seen this on a number of occasions. It's addressed to pathologists, including out of town hospitals, which would include Western Memorial. Did you receive this?

DR. NEIL:

Page 132

A. No.

COFFEY, Q.C.:

Q. Okay, I'm just going to, if we could, please, I'm just going to go to the next page, page two, which is the May 2nd, 2003, memo. Did you receive this?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. It is addressed to the same group, as it were, to pathologists, HSC, St. Clare's and out of town hospitals. We look back at page one, the April 4th memo, "Pathologists, HSC, St. Clare's and Out-of-Town Hospitals." So you got the second one?

DR. NEIL:

A. I got the second one.

COFFEY, Q.C.:

Q. But not the first?

DR. NEIL:

A. Not the first.

COFFEY, Q.C.:

Q. When did you first become aware that there was an April 4, 2003 memo?

DR. NEIL:

Page 133

A. I think it was during my first interview with you.
COFFEY, Q.C.:
Q. Okay, when I--myself and Mr. Eaton, I believe and Mr. Browne?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. He's nodding, interviewed you in Corner Brook.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. In connection with this matter?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, I'm going to take you through the wording of this and it says, "kindly note that immunohistochemicl stains with the following antibodies"--and it lists eight of them, I'll call it "CK34, CD3, CD5, CD20, CD79, CEA ER and PR have remained unreliable, erratic and therefore, unhelpful for diagnostic purposes. Consequently on the above, staining of these antibodies will stop forthwith until we can

Page 134

solve the reliability, sensitivity and specificity problems. Efforts are underway and hopefully a solution will be found within the next four to six weeks. You will be duly informed when such stains can resume." And it's signed by Dr. Ejeckam, copied to Mr Dyer and technical staff. Doctor, I appreciate, I'm asking this question with the benefit of hindsight, if you had received this memo in April, 2003, in this--using this wording, what, if anything do you think that would have caused you to do or think about at the time? What do you think your reaction would be?
DR. NEIL:
A. I wouldn't do very much, except make sure that all of our pathologists knew that those stains were not to be ordered, because obviously they were unreliable, erratic and unhelpful, and we would wait their return, as Dr. Ejeckam has outlined in the memo.
COFFEY, Q.C.:
Q. Now these are, I understand, four of these are stains that are related to lymphoma, I believe one gastro stain and one prostrate and the ER and PR?

Page 135

DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. Doctor, in April of 2003 and before that, had you had any reason to believe that these stains were unreliable, erratic and unhelpful for diagnostic purposes in your practice.
DR. NEIL:
A. In my own? No, no.
COFFEY, Q.C.:
Q. And in terms of the other pathologists practising with you, had any of them suggested this sort of thing to you?
DR. NEIL:
A. I had no suggestion that there were any problems, but bear in mind my previous comments about the numbers that we would have done.
COFFEY, Q.C.:
Q. Yes, I understand that. For example, just so the Commissioner perhaps can put this in context, of those four lymphoma stains in early 2003, how often, for example, would Corner Brook order those kind of -
DR. NEIL:

Page 136

A. I can tell you the practice with lymphomas. Lymphomas are generally sent to St. John's for diagnostic purposes.
COFFEY, Q.C.:
Q. Period.
DR. NEIL:
A. Period.
COFFEY, Q.C.:
Q. So if there are stains ordered, they would be generally done in St. John's anyway.
DR. NEIL:
A. Yes, yes.
COFFEY, Q.C.:
Q. Ordered in St. John's and interpreted?
DR. NEIL:
A. Yes, lymphomas are dealt with in St. John's because of the ancillary testing that goes along with the--flocytometry being one of them, so lymphoma stains per se would be generally a St. John's issue.
COFFEY, Q.C.:
Q. The prostrate related -
DR. NEIL:
A. Prostrate, we do it quite frequently now.
COFFEY, Q.C.:

Page 137

Q. Back in April of 2003?
DR. NEIL:
A. Not near what we would do today. So in that particular month, from April 4th, 2003 to the next memo, we may have not done any.
COFFEY, Q.C.:
Q. Okay. And you--now Dr. Ejeckam, I'll refer you now to Exhibit P-0113, it's page two, May 2nd, 2003 memo that you did receive.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Now this memo begins by saying that "I'm glad to inform you that we have rectified the difficulties related to the immunostain of ER/PR; therefore, we can now resume regular requests for these antibody stains. I will, however, like to bring the following information to your attention." And he goes on at some length. When you received this, Doctor, did you have any questions about what difficulties were being rectified here?
DR. NEIL:
A. No. I didn't really realize they had difficulties when I read the letter--until I

Page 138

read the letter.
COFFEY, Q.C.:
Q. And I appreciate that, but having read the letter, did you make any inquiries about well what difficulties are we talking about here?
DR. NEIL:
A. No, no.
COFFEY, Q.C.:
Q. Doctor, the idea of suspending the usage of, at least temporarily of certain stains, by which is referred to in that April 4th memo, do you have any memory of ever otherwise, ever being told by St. John's, by Eastern Health or its predecessor, the Health Care Corporation, that they were suspending the usage of stains for a particular period -
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. So, you didn't receive the memo, but if you had received it, it would have been your one and only time?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:

Page 139

Q. When you received the May 2nd memo, Doctor, what did you understand it was about and why it had been sent out?
DR. NEIL:
A. Well, I looked at this as an educational memo. Obviously they had to tell me that ER/PR stain was now re-instated, which I didn't realize it was stopped.
COFFEY, Q.C.:
Q. Suspended in the first place, yeah.
DR. NEIL:
A. I didn't know it was stopped in the first place. So, you know, it's an information and educational memo, so it told me it restarted and pointed out some difficulties that may have influenced the ER/PR staining of which we should pay attention to.
COFFEY, Q.C.:
Q. And what, if anything, having received the memo yourself, what, if anything, did you do with it? Did you distribute it to anyone or discuss it with anyone?
DR. NEIL:
A. This letter was addressed to "Pathologists, HSC, St. Clare's and Out-of-Town Hospitals."

Page 140

It was my assumption that every pathologist got this letter, that's how it reads, that's how I interpreted it. So I didn't particularly discuss it with anybody else.
COFFEY, Q.C.:
Q. Even within your own shop.
DR. NEIL:
A. We didn't have a meeting per se to discuss this memo. This is an information memo, an educational memo, quite clear in what it says, quite clear in what you need to do.
COFFEY, Q.C.:
Q. So it wasn't--was it posted on a bulletin board, kind of with -
DR. NEIL:
A. It was posted on my bulletin board.
COFFEY, Q.C.:
Q. - with Dr. Khalifa's February, '98 memo?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And in terms of distributing, you didn't know at the time, as the head there, distributed to all the pathologists.
DR. NEIL:

Page 141

A. My practice would have been to circulate anything that I felt was important. You have other memos that I had, I would write a note on a memo, "please circulate to all pathologists", that's my general practice. In this particular memo, I didn't write it there, it doesn't mean I didn't circulate it. I just don't remember if I did or not, even though it is addressed to all pathologists.

COFFEY, Q.C.:

Q. So you're saying that you may have circulated it.

DR. NEIL:

A. I may very well have circulated it.

COFFEY, Q.C.:

Q. But you may not be, on the basis that everybody should have gotten it, you understood -

DR. NEIL:

A. Everybody should have gotten it by the address, but it's my practice to circulate things that I think are important. I didn't write it on this, so I don't know if I did, but that's my practice.

COFFEY, Q.C.:

Page 142

Q. Now, Doctor, this deals with, particularly in the first paragraph, deals with the whole fixation issue and tissue processing, including E, inadequate tissue dehydration and F, tissue reprocessing, the idea of tissue dehydration is part of the initial processing.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Process itself, did you distribute this to anyone within Western Memorial at the time in the technologist end of things, because they would actually do the tissue processing or reprocessing.

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. So you'd have -

DR. NEIL:

A. Not that I'm aware of, not that I recall.

COFFEY, Q.C.:

Q. You had no reason then to believe that it would have been brought to their attention.

DR. NEIL:

A. No.

Page 143

COFFEY, Q.C.:

Q. Now the reference here to optimal fixation time for immunostains is 18 to 24 hours.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Which I take it is longer than perhaps, as times can be longer than--well depends, I suppose, 18 to 24, it may or may not be an overnight, depending upon the time of day it ends up first in the formalin and the time you started work the next day.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. It could be just under 18 hours and anywhere up from there. So, Doctor, overall then I take it, having received the memo, you read it?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And what, if any, changes in your own practice did you make as a result? Particularly when we look at paragraph 3, I'll just ask you,

Page 144

well first of all we'll go back, in terms of paragraph 1, I take it, was concerned with fixation and tissue processing and reprocessing and the type of formalin, they used 10 percent neutral buffer formalin, the formalin that was being used in Corner Brook?

DR. NEIL:

A. Right.

COFFEY, Q.C.:

Q. On that point, while it's on my mind, do you have any memory of Corner Brook utilizing--mixing its own formalin?

DR. NEIL:

A. Corner Brook did not mix its own formalin.

COFFEY, Q.C.:

Q. Okay, it's utilized commercially -

DR. NEIL:

A. Commercially prepared formalin.

COFFEY, Q.C.:

Q. Do you know if any checks were routinely made as to what the formalin's pH level from time to time, do you know?

DR. NEIL:

A. It wasn't at that time, but it is now.

COFFEY, Q.C.:

Page 145

Q. Okay, and that's been done since when? Since 2005?
DR. NEIL:
A. No, no, just recently when it became an issue.
COFFEY, Q.C.:
Q. And when you say "recently" what are we talking about?
DR. NEIL:
A. Within the last two weeks--excuse me, it's probably being done today, I'm not sure exactly when it started.
COFFEY, Q.C.:
Q. But it's certainly since 2008 began, the subject matter arose and it's been addressed since the beginning of 2008 in Western Memorial.
DR. NEIL:
A. We discussed it in our initial interviews.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. I did my investigation as to what was being done, discovered Ph was not being measured, it is being measured now.
COFFEY, Q.C.:

Page 146

Q. And that's since the interview that I referred to earlier?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay. You made inquiries and have taken steps to ensure it's done.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, just looking at Dr. Ejeckam's memo here, the first page, the last sentence reads "Regular check and change of grades of alcohol in the tissue processor will eliminate inadequate tissue dehydration." Do you know--well, first of all, who in Corner Brook is responsible for that end of the matter?
DR. NEIL:
A. The tissue processor has a maintenance schedule that I believe you have a copy of?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. That maintenance schedule responsibility is a technologist responsibility and that's looked

Page 147

after on a daily, weekly and a monthly basis with the appropriate checks that you have in that document. That would include changes of alcohols.
COFFEY, Q.C.:
Q. Okay, and how long--maybe you just said it, you're certain it is being done now. In the past, do you know how religiously that was or wasn't followed?
DR. NEIL:
A. That maintenance schedule has been in place for a long time.
COFFEY, Q.C.:
Q. Okay. Throughout the period of time since the, say '97, '98?
DR. NEIL:
A. I would think so, yes, we have had several processors in my time. The two that we're using today had been there quite awhile and that would have been on a recommendation from the manufacturer as to how to do the regular maintenance schedule. So I'm pretty confident saying that back in '97 we were using that.
COFFEY, Q.C.:
Q. Doctor, do you know if any records are kept of

Page 148

the fact that such maintenance is being done?
DR. NEIL:
A. There are records, yes, I don't know how long they are kept, but there are records of that.
COFFEY, Q.C.:
Q. Prepared by the technologists involved?
DR. NEIL:
A. Yes, signed, initialled.
COFFEY, Q.C.:
Q. Doctor, here in paragraph two, the reference here to ER/PR false negative results increase in core biopsies, therefore where possible request excision biopsies." Did you make any change in your own practice in relation to that?
DR. NEIL:
A. No, most of our cases for ER/PR are not done on core biopsies.
COFFEY, Q.C.:
Q. They're done on -
DR. NEIL:
A. They're done on excision biopsies, there was no change. Excision biopsies or the mastectomy specimen, whichever the case may be?

Page 149

COFFEY, Q.C.:
Q. Paragraph 3 refers to normal tissue as internal controls, it's the second level control, "nuclear staining and normal breast tissue is heterogeneous and varies with menstrual cycle." Now, when you read that, was that your first introduction to the idea of internal controls?
DR. NEIL:
A. I knew about internal controls.
COFFEY, Q.C.:
Q. For ER and PR I mean.
DR. NEIL:
A. Internal controls are not different for ER/PR than they are for any other stain.
COFFEY, Q.C.:
Q. Okay, were you using or looking out for or reading internal controls before May of 2003 in relation to ER/PR?
DR. NEIL:
A. My focus was on external controls.
COFFEY, Q.C.:
Q. So you don't know whether you would or wouldn't have looked at the internal controls before that?

Page 150

DR. NEIL:
A. I can't say that I looked at internal controls. I can't say that I didn't look at internal controls. My focus was external controls as outlined by Dr. Khalifa's memo.
COFFEY, Q.C.:
Q. Do you know if the contents of paragraph 3 caused you to change your approach?
DR. NEIL:
A. Yes, certainly.
COFFEY, Q.C.:
Q. Okay, what, if anything, did you -
DR. NEIL:
A. I paid attention to internal controls as much as I possibly could.
COFFEY, Q.C.:
Q. And I take it that would be in terms of like looking through the scope, at the tail end of it -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. But how about choosing choice of blocks?
DR. NEIL:
A. Choice of blocks? Yes, you would choose

Page 151

blocks that had internal controls.
COFFEY, Q.C.:
Q. Assuming that was possible, I take it, you're hesitating a bit and I take it -
DR. NEIL:
A. I hesitate because you said blocks.
COFFEY, Q.C.:
Q. Oh, block for ER/PR.
DR. NEIL:
A. When you actually take the tissue and put it into the block, you don't know you have a control, an internal control.
COFFEY, Q.C.:
Q. I appreciate that.
DR. NEIL:
A. Until you look at the slide from that block. When choosing the blocks, you make sure you have normal breast tissue, utilize the amount of tumour.
COFFEY, Q.C.:
Q. Utilizing the H&E slide.
DR. NEIL:
A. Utilizing the H&E slide, and we did.
COFFEY, Q.C.:
Q. So from May onward, May 2003 onward, your own

Page 152

personal practice was to do that?
DR. NEIL:
A. Oh yes.
COFFEY, Q.C.:
Q. Do you know if your fellow pathologists' practice was to do that from May of 2003 onward?
DR. NEIL:
A. I would think so.
COFFEY, Q.C.:
Q. Have you discussed it with any of the since?
DR. NEIL:
A. No, I haven't discussed it but I have looked at our spreadsheets for Mount Sinai from that period of time and on our spreadsheets, internal controls are noted. There's a high percentage of internal controls that are present and stained from those spreadsheets from those particular years, which leaves me to believe that we all looked through them and sent -
COFFEY, Q.C.:
Q. Those years would be from 2003 on, I take it? Or was it for all years, even before 2003?
DR. NEIL:

Page 153

A. Those spreadsheets?
COFFEY, Q.C.:
Q. Yes, because the spreadsheets will cover the whole, the period '98 through '05, so I'm just curious -
DR. NEIL:
A. Yes, those spreadsheets, I looked through all those spreadsheets, all those results, there's a high percentage of internal controls that are present and stained, which leaves me to believe that we did, all of our pathologists looked for internal controls.
COFFEY, Q.C.:
Q. And would that have been before May of 2003, as well as after or did you distinguish in looking at the spreadsheets did anything change in May of '03?
DR. NEIL:
A. It didn't change.
COFFEY, Q.C.:
Q. It didn't.
DR. NEIL:
A. It didn't change, if you look through the spreadsheets, if you look consistent throughout ever sheet.

Page 154

COFFEY, Q.C.:
Q. Okay, and these, I take it, these spreadsheets are which ones you're talking about now?
DR. NEIL:
A. The spreadsheets from Mount Sinai which gave the results of the recall.
COFFEY, Q.C.:
Q. I'm sorry, gave you results of which?
DR. NEIL:
A. The recall.
COFFEY, Q.C.:
Q. The retesting?
DR. NEIL:
A. Retesting.
COFFEY, Q.C.:
Q. That would be the spreadsheets that came in 2006, is that the--those spreadsheets?
DR. NEIL:
A. Yes, yes.
COFFEY, Q.C.:
Q. They would be the internal controls, I take it that Mount Sinai's own slides.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:

Page 155

Q. Using Western Memorial's blocks?
DR. NEIL:
A. Yes, correct.
COFFEY, Q.C.:
Q. Okay, are present and stained and they would be Dr. Mullen's -
DR. NEIL:
A. Dr. Mullen's slides, but taken from the blocks that we would have selected.
COFFEY, Q.C.:
Q. Doctor, have you been made aware that Dr. Mullen has looked back at the original slides for at least certain patients? Were you aware of that?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay. Now while I'm thinking about it, Doctor, in terms of this whole ER/PR issue, because otherwise I'll just forget to return to it, have you, yourself, had occasion to go back and look at the original slides for ER/PR?
DR. NEIL:
A. No, I don't have the original slides.

Page 156

COFFEY, Q.C.:
Q. And they got, I take it, in the retesting process, got sent to St. John's?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. Doctor, in reference here to paragraph four, Dr. Ejeckam refers to "most PR tumours, positive tumours are also ER positive, however ten percent would be PR positive, ER negative." Were you aware of the sort of statistics involving positivity rates for ER verses PR?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. So this would have been the first you would have learned of it?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. Exposed to it. Does Corner Brook keep any stats on ER or PR positivity rates?
DR. NEIL:
A. No.

Page 157

COFFEY, Q.C.:
Q. And that was back then and even today you don't?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. Reporting of ER and its formulae in the literature, he refers to for positive results and then there's a reference to this consensus statement. Now, Doctor, you had been utilizing that comment that Dr. Khalifa had provided back in 1998, as to 30 percent being the equivalent biochemical assay positivity. Did this change anything in relation to that?
DR. NEIL:
A. No, no.
COFFEY, Q.C.:
Q. Did you continue to utilize the comment?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. That comment is a correlation between the biochemical assay and the immunohistochemical assay.
COFFEY, Q.C.:

Page 158

Q. That's the one cited by Dr. Khalifa.
DR. NEIL:
A. Yes, but has nothing to do with the percentage of staining that we reported.
COFFEY, Q.C.:
Q. So having read this, you thought, well if there's any percentage at all positive, we were reporting that anyway, so I'll just continue to utilize that.
DR. NEIL:
A. Yes, yes.
COFFEY, Q.C.:
Q. Now the oncologists in Corner Brook, oncologists who practise in Corner Brook throughout the timeframe we've been talking about, '97,'98 through even today, for that matter, they're in the main located where, based where, oncologists are based, are they based in Corner Brook or in St. John's?
DR. NEIL:
A. Well they're based in St. John's.
COFFEY, Q.C.:
Q. And decisions as to hormonal treatment in Corner Brook are in the main made by which group of doctors?

Page 159

DR. NEIL:
A. The oncologists.
COFFEY, Q.C.:
Q. And so they would be the ones, you would have always understood that they are the ones who would be utilizing your report?
DR. NEIL:
A. Yes, yes.
COFFEY, Q.C.:
Q. Reference here to "higher staining intensity does not reflect better results. This is a function of staining procedure and may alter." What did you understand was meant by "higher staining intensity" here in this context?
DR. NEIL:
A. The browner the stain.
COFFEY, Q.C.:
Q. Okay, the more intense, I take it, the colour?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. "And all cytoplasmic staining and ER and PR immunostain is to be considered as negative."
DR. NEIL:
A. Yes.

Page 160

COFFEY, Q.C.:
Q. Would you have been aware of that before this?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And you would be aware of that because of the reference to nuclei?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. "ER positive tumours" and there's a listing of them there and I gather, as well from evidence the Commissioner has heard, that lobular should also have been included here, Dr. Ejeckam said he just omitted to include it. As a practising pathologist, were you aware that certain types of tumours were more prone to being ER positive than others?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. So this would have been your first exposure to that?
DR. NEIL:
A. Yes.

Page 161

COFFEY, Q.C.:
Q. Did you make any inquiries in that regard?
DR. NEIL:
A. No, this was a memo that came from another well respected physician or pathologist and this is a statement of fact. I'm sure it's found in any standard textbook as a practising pathologist who is not a breast pathologist, who does not see a lot of ER/PR staining, simply because we don't have the numbers, this would not have been something that I would have had on the top of my head at any time. I kept this as a memo and I'm aware of it.
COFFEY, Q.C.:
Q. And, Doctor, he concludes by saying "We are working on the remaining antibodies and hopefully will, all normal immunostains will resume soon." So, at the time, this obviously presupposes somebody has read the April 4th memo.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Did that cause you any curiosity or make any inquiries about what he was talking about here?
DR. NEIL:
A. No. My assumption was that if we request any particular stain that they weren't doing, they wouldn't do them and tell us that they weren't doing them because they were having problems with them.
COFFEY, Q.C.:
Q. In that regard, Doctor, and while on the topic now, Western Memorial and then Western Health, in this--in relation to this sort of subject matter such as IHC service, which certain since the late 90's and before was being done solely at the General Hospital, how did Western Memorial, from your perspective, view the Health Care Corporation and then Eastern Health in relation to this matter? What was the relationship between you concerning, for example, IHC stains, in comparison, for example, to Mount Sinai now, because they're doing some IHC staining.
DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. How did you view the relationship?

Page 162

Page 163

DR. NEIL:
A. I'm not sure what you mean by the question, but I will say this -
COFFEY, Q.C.:
Q. In the context here, because you just made a comment, look, we were asking for a test to be done.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. If they can't do it or can't do it properly, they'll let me know.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And it's in relation to that sort of thing, like how did you view the relationship in that regard between Western and St. John's?
DR. NEIL:
A. I would say we had a good working relationship, but, I mean, I would often discuss issues with appropriate technologists or pathologists if I had concerns. I didn't have any hesitation picking up the phone and talking to Dr. Cook about anything, and I've done that on numerous occasions usually regarding employment and trying to get other physicians to come work for us. That was one of our main focuses, but in relationship with Eastern Health, Eastern Health is a referral centre, they do things that we don't -- even outside -- many more things outside pathology. They're the referral centre for all of our in-province testing. There's always a constant relationship between our lab manager and their lab managers, their technologists and our technologists, similar as what we would have with Mount Sinai. They're now the referral centre for immunohistochemisty ER/PR and HER2/neu.
COFFEY, Q.C.:
Q. And was Western during the period from, say, '98 through 2005 utilizing any other location for IHC testing?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. So all the IHC testing.
DR. NEIL:
A. As far as I can remember, IHC testing was done

Page 164

Page 165

in Eastern Health. Now we have had occasion to refer consultation cases to Halifax. If in their judgment, they needed -- the pathologist in Halifax needed further immunohistochemical staining for diagnostic purposes, I'm sure that they would go ahead and perform them at their own institution and report as they saw fit.

COFFEY, Q.C.:

Q. And come back --

DR. NEIL:

A. And come back to us as an external consultation, but our referral for our own purposes to get stains done would be to Eastern Health, or Health Care Corporation, as it was then.

COFFEY, Q.C.:

Q. And finally, Doctor, Dr. Ejeckam, who wrote the memo at that time in 2003, you understood who -- who did you understand Dr. Ejeckam was in relation to IHC? Before you got this memo, did you have any understanding as to whether he had any involvement in IHC?

DR. NEIL:

A. I did know he had something to do with IHC, so

Page 166

I wasn't surprised to get a memo from him regarding IHC. There was some indication that he had some involvement with IHC and some relationship with that lab.

COFFEY, Q.C.:

Q. Doctor, at the time you received this May 2nd 2003 memo, did it cross your mind at all that maybe a look back in terms of the results you had received up to that point -- the stains, the stain slides you'd received and reported on up to that point, did it cross your mind or did it ever come up at Western that you were aware of that maybe we should look back at the past two months -- two or three months to see?

DR. NEIL:

A. We didn't do that. We didn't -- and it didn't cross my mind.

COFFEY, Q.C.:

Q. And, Doctor, Exhibit -- page five, this is the June -- P-0113, page five, June 19th, 2003 memo. This is to Terry Gulliver from Dr. Ejeckam. Again, Doctor, it's not sent to you, nor to Western. I take it that you had -- you're certainly now aware that this memo exists, or are you, this June 19th memo?

Page 167

DR. NEIL:

A. I don't know what's in this memo.

COFFEY, Q.C.:

Q. Okay, this is -- it's sort of internal to Eastern Health, but Dr. Ejeckam is -- it says, "Following persistent erratic results of immuno stains in our laboratory, I expect to work closely with technical staff in order to rectify this problem. Despite the fact the problem seems to have been arrested, the state of immuno stains at the General Hospital, Department of Laboratory Medicine, Pathology is still unsatisfactory", and then he goes on from there.

DR. NEIL:

A. Yes, okay.

COFFEY, Q.C.:

Q. Were you made aware of this at any point before coming here today, do you think?

DR. NEIL:

A. I knew that -- I knew in recent months that that existed.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

Page 168

A. Did I read it, did I have it; I don't -- no, I didn't read it.

COFFEY, Q.C.:

Q. And that's just, as you say, in recent months to now?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. Way back in 2003, I had no idea that existed.

COFFEY, Q.C.:

Q. That there was this sort of internal concern being expressed within Eastern Health --

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Or within the Health Care Corporation.

DR. NEIL:

A. I was not part of that.

COFFEY, Q.C.:

Q. Doctor, as a utilizer of that IHC service at the time, if those sorts of concerns were being expressed by Dr. Ejeckam, who apparently at that time had significant involvement in

Page 169

the matter, do you think as a utilizer of the service would it have been potentially useful for you to know?

DR. NEIL:

A. Yes, I certainly agree, it would very -- it would be a very useful memo for me to see.

COFFEY, Q.C.:

Q. And why is that?

DR. NEIL:

A. I think it's -- can I go back to the first part?

COFFEY, Q.C.:

Q. You certainly can, Doctor, yes.

DR. NEIL:

A. Having not read this, I haven't gone through every page -- every line, but the first statement would cause me great concern. "Persistent erratic results" would cause me great concern.

COFFEY, Q.C.:

Q. Because you'd want to know persistent over what time, how erratic?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Page 170

Q. Which stains?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. You'd want those questions answered.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And as you are utilizing the service -- I'm going to ask you this. Was Western Memorial paying for the service?

DR. NEIL:

A. We shouldn't have been paying for the service.

COFFEY, Q.C.:

Q. I was going to ask you about that. First of all, were you paying for the service?

DR. NEIL:

A. I think we were paying for the service, yes.

COFFEY, Q.C.:

Q. And that would be -- I take it, you'd order an IHC stain or stains?

DR. NEIL:

A. Yes, and it would all be charged back to us.

COFFEY, Q.C.:

Q. charged back to your budget?

Page 171

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And you say you shouldn't have been. Why is that?

DR. NEIL:

A. Well, again as I mentioned earlier, Eastern Health or Health Care Corporation at the time, I believe was the tertiary care centre. We did what we had to do in the periphery within our own capacity and we had to have a tertiary care centre to send our cases that we couldn't handle on our own, which was Health Care Corporation of St. John's. This was a service that should have been provided to us.

COFFEY, Q.C.:

Q. How does that stand as we -- as you sit here and I stand here today, what's the situation now?

DR. NEIL:

A. I don't think the situation has changed.

COFFEY, Q.C.:

Q. It's the same as it always was in terms of --

DR. NEIL:

A. And I can't be entirely sure of that, Mr.

Page 172

Coffey, to be honest. It may be a question that we can address later.

COFFEY, Q.C.:

Q. Oh, I'll take it up with your VP Medical.

DR. NEIL:

A. Because that -- our lab manager would know that right away.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. And I don't quite know the answer to that, but I suspect nothing has changed.

COFFEY, Q.C.:

Q. That issue, the issue of payment for service, has that ever been raised, do you know?

DR. NEIL:

A. I've complained about it.

COFFEY, Q.C.:

Q. Whom have you complained to?

DR. NEIL:

A. I guess among ourselves and our lab managers that we shouldn't be doing this, and I'm sure our lab managers have asked Eastern Health why are we doing this. As far as I know, nothing has changed.

Page 173

COFFEY, Q.C.:
Q. If we could -- you say where Dr. Ejeckam here in his June 19th memo says, "Persistent erratic results", that would have given you concern, results of immuno stains. Looking back at page one, the April 4, 2003, memo which I appreciate you did not receive where he says here -- he lists eight stains. Two of them are ER/PR, "have remained unreliable, erratic, and, therefore, unhelpful for diagnostic purposes". If you had received that at the time, would you have had any concerns about that, bearing in mind that you've been reporting cases for a month or two?
DR. NEIL:
A. No, I wouldn't have any concerns about that because "they're unhelpful for diagnosis purposes". We wouldn't have occasion to utilize those on a very frequent basis. The only concern that I would have is that if they were going to be longer than four to six weeks. It said, "Efforts are underway. Hopefully a solution will be found within the next four to six weeks". If it had occurred

Page 174

any longer than that, I would have had probably to find some place else to get those stains performed. As I mentioned earlier, some of them are for lymphomas, so that wouldn't be a concern to me, anyway. The only ones that would be probably of concern would be the prostate, the CEA, and the ER/PR, but we didn't frequent those anyway. So it really didn't make a lot of difference. We'd wait and see if they got it up and running and take it from there.
COFFEY, Q.C.:
Q. I appreciate that in the prospective sense. When he says, "have remained", that's past tense, "unreliable, erratic, and, therefore, unhelpful for diagnostic purposes" -- now at this point in time, ER and PR, you weren't utilizing them in the main for diagnostic purposes, it was for treatment decisions? I appreciate ER and PR can be utilized for diagnostic --
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. In some situations, but that's not really what

Page 175

that's -- ER and PR most of the time in your world would have been ordered for non-diagnostic?
DR. NEIL:
A. It would be more for therapeutic purposes.
COFFEY, Q.C.:
Q. For therapeutic purposes?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. So if in this context here -- if in April, 2003, you had learned that those four stains, in particular, you just referred to, as stated here, "remained unreliable, erratic and unhelpful", do you think that would have caused you -- would it have caused you to think back to, well, I reported an ER and PR a month or two ago?
DR. NEIL:
A. Yeah, that would be a concern, yes. What I was reading there, Mr. Coffey, was the comment about diagnostic purposes.
COFFEY, Q.C.:
Q. And I appreciate that, and I -- I appreciate in your world that that, as a physician, has a

Page 176

particular technical meaning, but ER/PR was not in the main used for diagnostic purposes?
DR. NEIL:
A. No, that's right.
COFFEY, Q.C.:
Q. It was used for therapeutic purposes or decisions, and to be told that it's unreliable, erratic, and unhelpful --
DR. NEIL:
A. It would cause me concern, yes.
COFFEY, Q.C.:
Q. And I gather, as best one can tell, I take it, you would think that you might have made some inquiries even internally to say, well, how many have we had recently?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Do you think you should have been made aware as the Chief of Pathology in Corner Brook utilizing this service that this was a problem?
DR. NEIL:
A. Most definitely. Although it says "out of town hospitals", I didn't get it. Anything

Page 177

that we send anywhere which is a problem, as I mentioned earlier in my comments about Dr. Mullen, it should be referred back to the place that it originated. As the person who was asking for the test, if there's a problem, I'd like to know about it.

COFFEY, Q.C.:

Q. I take it as well if an institution that you are utilizing as a consultancy service becomes aware of a problem that could affect the work you've done --

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. You'd like to know?

DR. NEIL:

A. Yes, I'd like to know.

COFFEY, Q.C.:

Q. If we could, please, Exhibit P-0907, please. Actually, I apologize -- I'll leave that. Exhibit P-1913, please. Doctor, these are minutes of the Division of Anatomical Pathology, meaning site chiefs and divisional managers of the Health Care Corporation, March 31, 2004. Page two, Doctor, and at 4.2, "New

Page 178

technology. The immunoperoxidase stainer appears to be working generally well. However, there continues to be some problems with estrogen and progesterone receptors". The idea that there was continuing, at least according to this assertion, some problems with estrogen and progesterone receptors in March, 2004, was that brought to your attention?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Exhibit P-1393, please, page - 1393, thank you. Doctor, this is again -- these are minutes of Division of Anatomical Pathology meeting, September 1st, 2004. Paragraph 3.6 on page three, "HER2/neu, ER and PR immuno staining, Dr. Fontaine did mention that Dr. B. Carter would like to review all the new HER2/neu and ER/PR immuno staining before returning to the reporting pathologist. Some members of the division expressed that this is unnecessary and they will continue reporting their own cases". Doctor, I appreciate -- again this involves St. John's, but you did

Page 179

have at times contact with pathologists in St. John's in an informal way.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Back and forth. Were you ever made aware that -- well, first of all, do you know who Dr. Carter is, B. Carter?

DR. NEIL:

A. Yes, I do.

COFFEY, Q.C.:

Q. She's a breast pathologist. Were you made aware in the fall of 2004 that she was interested in looking at ER/PR and HER2/neu slides, and the reaction -- I'm talking about, I suppose, were you made aware of this through the gossip or commentary with pathologists in St. John's that Dr. Carter --

DR. NEIL:

A. I can't say that I was, no.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. I'm not surprised that she'd want to do that, but I wasn't made aware that she was going to

Page 180

do that.

COFFEY, Q.C.:

Q. Doctor, if you had had the -- been in the position where Dr. Carter had, in fact, been working in Corner Brook and she wanted to look at everyone's ER/PR and HER2/neu slides, would you have had any problem with that?

DR. NEIL:

A. It would be an ideal situation.

COFFEY, Q.C.:

Q. I take it from your perspective, you would have had her report all of them?

DR. NEIL:

A. Yes. Appropriate training.

COFFEY, Q.C.:

Q. Yes.

COMMISSIONER:

Q. Excuse me, Mr. Coffey, but while this is running through my head, Doctor, when you were talking about the initial use of IHC for ER/PR, and there was that period of time which initially you'd forgotten about that they came to St. John's and were read in St. John's and reported and came back to you --

DR. NEIL:

Page 181

A. Yes.
COMMISSIONER:
Q. And then things switch around then, the slides were sent back, and you started to read the slides yourselves in Corner Brook, did the pathologists in Corner Brook take any position about their wanting to read the slides or were you content with the older method where Dr. Khalifa was effectively reading the slides and sending back the reports?
DR. NEIL:
A. I was quite content for Dr. Khalifa to continue. Did I object to them sending them to us; no.
COMMISSIONER:
Q. But did you object to his reading them --
DR. NEIL:
A. No, I didn't object to it.
COMMISSIONER:
Q. Or was Corner Brook among any movement to have the pathologists read their own slides?
DR. NEIL:
A. No.
COMMISSIONER:
Q. Okay, thank you.

Page 182

DR. NEIL:
A. I would have preferred if Dr. Khalifa had continued to do it, to be quite honest.
COMMISSIONER:
Q. And why would that be?
DR. NEIL:
A. Workload is one issue. Experience on his part, the more you see, the better you get, but they made the decision that they were going to have all pathologists read them, and I accepted that.
COFFEY, Q.C.:
Q. Exhibit P-1918, please. Doctor, this is a memo, October 7, 2004, and again it doesn't involve -- it's from Dr. Cook as Clinical Chief, and it involves pathologists at the Health Care Corporation, but the subject matter I want to ask you about. He writes, "I would like to remind everyone that estrogen and progesterone receptors should be ordered automatically on all excisional biopsies, lumpectomy, and mastectomy specimens, demonstrating infiltrating carcinomas. It's come to my attention these receptors have not been ordered on a number of cases", and he

Page 183

wants -- he asks for their cooperation. Doctor, in Corner Brook in terms of the idea of ordering ER and PR for all those types of cases, how long has it been the practice in Corner Brook?
DR. NEIL:
A. A very long time.
COFFEY, Q.C.:
Q. Would it predate October, 2004?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Had you ever become aware of the necessity to remind everyone in Corner Brook?
DR. NEIL:
A. I didn't do what Dr. Cook did, but I don't recall ever having to say to someone "would you please remember to do that", no, on a verbal --
COFFEY, Q.C.:
Q. Sure. It never came to your attention, I take it, in -
DR. NEIL:
A. Never came to my attention that there was--no.
COFFEY, Q.C.:

Page 184

Q. So, and the ordering of ER and PR dates back to when, do you think, as a routine or as a uniform thing in Corner Brook?
DR. NEIL:
A. Well, remember, we did the biochemical.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. So it started way back then and it continued, just a change of method.
COFFEY, Q.C.:
Q. Okay. Doctor, quality assurance activity in Corner Brook for pathologists or pathologist-type activity, what, if any, is there now?
DR. NEIL:
A. Today?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. Every biopsy that is of concern, every biopsy that is malignant is reviewed by a second pathologist. We document that on our reports. Any cases that we have any concerns about whatsoever, we share among ourselves and come up with a consensus diagnosis.

Page 185

COFFEY, Q.C.:
Q. That's noted in the report, I take it, as a consensus diagnosis?
DR. NEIL:
A. If we have a consensus, it is noted in the report.
COFFEY, Q.C.:
Q. This checking, is it done blind, in the sense of--not so much, you know -
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. - in the sense of do you know if you're checking somebody else's work what he or she's initial view is? For example, if I'm your fellow pathologist, and I've looked at the slide and made my own determination, and ask you to check it, would you know what my view was already?
DR. NEIL:
A. No. Sometimes I might.
COFFEY, Q.C.:
Q. Sometimes you would.
DR. NEIL:
A. A lot of times, I don't.

Page 186

COFFEY, Q.C.:
Q. Okay, and you understand what I'm talking about, in terms of sometimes you can be unconsciously influenced by someone else's decision.
DR. NEIL:
A. Yes. In cases where it's obvious, that's--it doesn't matter what I say. It's obvious. In cases where it's not obvious, I would say to my colleague, "please look at this slide. Give me your opinion." And they do the same.
COFFEY, Q.C.:
Q. Is there any written policy in Corner Brook in relation to that?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Is there any external quality assurance or proficiency testing that Corner Brook pathologists are involved in today?
DR. NEIL:
A. From a surgical pathology perspective?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:

Page 187

A. We send slides to Gamma DynaCare and not in a formal quality assurance manner, but they do see our slides, but that's not quality assurance. We do send consultations to Halifax, but that's not quality assurance. I know the question you're asking me and the answer is no, we don't have an external quality assurance program for pathologists.
COFFEY, Q.C.:
Q. Have you made any inquiries in that regard?
DR. NEIL:
A. I know it exists in St. John's. They send somewhere to Calgary, I do believe. I'll have some comments later on after.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. Some of the recommendations I would like to see, and that is certainly going to be one of them.
COFFEY, Q.C.:
Q. Is there any money available in Corner Brook for continuing education, for example, for pathologists?
DR. NEIL:

Page 188

A. Now there is. There was, during my whole career, very little, but there was some available. That's since changed.
COFFEY, Q.C.:
Q. I'm sorry, so there was very -
DR. NEIL:
A. 1200 dollars.
COFFEY, Q.C.:
Q. 1200 per pathologist?
DR. NEIL:
A. Per pathologist on a yearly basis.
COFFEY, Q.C.:
Q. And that changed when?
DR. NEIL:
A. 1st of May.
COFFEY, Q.C.:
Q. Of this year?
DR. NEIL:
A. Um-hm.
COFFEY, Q.C.:
Q. How much is it now?
DR. NEIL:
A. 5,000
COFFEY, Q.C.:
Q. Over the years, Doctor, how much, in practice,

Page 189

would 1200 dollars--how much continuing medical education for a pathologist would that buy?

DR. NEIL:

A. Very little.

COFFEY, Q.C.:

Q. Okay. What could you, in fact, do with 1200 dollars?

DR. NEIL:

A. I attend a pathology review course every year in Toronto for a weekend. It doesn't cover that.

COFFEY, Q.C.:

Q. It subsidizes it, I take it?

DR. NEIL:

A. It subsidizes that.

COFFEY, Q.C.:

Q. Doctor, again, related to that, if you can tell the Commissioner, if you had--from your perspective, how much time per year would you spend on continuing education?

DR. NEIL:

A. We've had an allotted one week for CME.

COFFEY, Q.C.:

Q. And in order to do that, I take it, from

Page 190

Corner Brook you'd have to travel?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. How much does that cost? Ballpark figure, how much--because again, you know, we wouldn't know. I mean, as lawyers, as Commissioner, as a judge, we wouldn't necessarily know how much it would cost a pathologist to travel and to attend a CME.

DR. NEIL:

A. If you want to travel to a CME that's got substance to it -

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. - and by that I mean, you know, Boston, somewhere in the U.S., and there's a lot of material that's--a lot of courses that are available in various parts of the U.S. and in Europe. Realizing that we are specialists that are few, so we have to meet with other specialists who do the same thing that we do. So we have to travel fair distances. So a course in Boston, which some of us have

Page 191

attended in the past number of years, could run you five to six thousand dollars.

COFFEY, Q.C.:

Q. Okay. So the most recent increase, the current state of affairs might cover one -

DR. NEIL:

A. Yes, will help. Will help, yes, it will.

COFFEY, Q.C.:

Q. It will cover the one -

DR. NEIL:

A. It should cover that one course. It didn't before.

COFFEY, Q.C.:

Q. Doctor, the practice you refer to of, you know, informally, but routinely looking at each other's slides within Corner Brook, you know, when there is a case that somebody--you want somebody else to look at, to check a diagnosis or whatever, how long has that been going on?

DR. NEIL:

A. It's been going on quite a while, on an informal basis. We recently, I would say probably in the last year or 18 months or so, have said this has to occur. This is

Page 192

mandatory. We have to do this. And we have been documenting. If I saw something, I'd write it that you had seen it as well. So we're becoming a lot more stringent with that. I have recently, around this same time frame, gathered information about quality assurance for pathologists throughout the U.S. and Canada, of which I have a draft document that I want to implement.

COFFEY, Q.C.:

Q. I'm sorry, that you what? I just couldn't hear you.

DR. NEIL:

A. I have a draft document that I would like to implement.

COFFEY, Q.C.:

Q. Okay, yes.

DR. NEIL:

A. Within our own institution. However, I've been hesitant with doing that because I'd like to see this as a provincial issue. We should all be doing the same thing. For me to develop a particular document for my institution for five pathologists, it should be spread out to the province, and in my field

Page 193

of work, I don't always have the time to continue with these administrative duties and see them to their fruition as much as I would like. So it's been shelved to a certain extent, but it's still there to be done, and hopefully at the end of many of these proceedings, these will be some of the recommendations that come out that we have to have this as a provincial initiative.

COFFEY, Q.C.:

Q. So, Doctor, this draft that you've prepared, is that suited to your size institution or is it wider?

DR. NEIL:

A. It can be wider. These are recommendations from the American Pathology organizations, associations.

COFFEY, Q.C.:

Q. Yes. Have you distributed that to anyone, like locally to -

DR. NEIL:

A. Yes, we've discussed it.

COFFEY, Q.C.:

Q. Okay. Within Corner Brook?

DR. NEIL:

Page 194

A. Yes.

COFFEY, Q.C.:

Q. How about outside?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Possible for us to get a copy of that? Bearing in mind it is a draft, and I appreciate that.

DR. NEIL:

A. Well, I mean, I can find it off the web site. I don't have it with me.

COFFEY, Q.C.:

Q. Okay, and I appreciate, but you could forward that through Mr. Browne.

DR. NEIL:

A. I could certainly forward that.

COFFEY, Q.C.:

Q. Okay, if you would, please?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And it's been discussed locally within Corner Brook itself?

DR. NEIL:

Page 195

A. Yes.

COFFEY, Q.C.:

Q. And your fellow physicians there, are they receptive to that?

DR. NEIL:

A. Oh yes.

THE COMMISSIONER:

Q. Excuse me, Mr. Coffey. I'm butting in again. Doctor, have you been--I understand that there is an informal, if not formal arrangement whereby people with your position in the other hospitals, other authorities, meet from time to time.

DR. NEIL:

A. Not very often.

THE COMMISSIONER:

Q. You're looking -

DR. NEIL:

A. Not very often, but we do meet -

THE COMMISSIONER:

Q. It exists in theory, but -

DR. NEIL:

A. - we do meet from time to time, but it's rare.

THE COMMISSIONER:

Q. Okay, and well, do you use technology and have

Page 196

conference calls or anything of that nature?

DR. NEIL:

A. We have--we do speak to one another, but it's very, very informal.

THE COMMISSIONER:

Q. Okay. So it's not likely that I'm going to see a agenda which says -

DR. NEIL:

A. You won't see an agenda.

THE COMMISSIONER:

Q. - develop a provincial -

DR. NEIL:

A. No, you won't see that.

THE COMMISSIONER:

Q. - quality assurance program.

DR. NEIL:

A. You won't see that.

THE COMMISSIONER:

Q. And who's going to do what on it or anything of that nature?

DR. NEIL:

A. It's been talked about at Eastern Health.

THE COMMISSIONER:

Q. Um-hm.

DR. NEIL:

Page 197

A. And I've talked about it in my own region, but actually to get together and actually do that, it's not been done. I know that there have been some meetings that I wasn't able to attend, and I don't know much about them, but Bev Carter actually has discussed this with some other people and I don't know if it's-- how far along it is.

THE COMMISSIONER:

Q. Okay, and have you had any contacts, for example, from somebody within the Department of Health to sort of say "can we be of assistance -

DR. NEIL:

A. I haven't personally, no.

THE COMMISSIONER:

Q. - in coordinating this for regions?" or something of that nature?

DR. NEIL:

A. I haven't personally, no.

THE COMMISSIONER:

Q. May not necessarily be their role, but--or have you thought about contacting them to say "can you be of assistance in developing this?"

DR. NEIL:

Page 198

A. This is really the recommendation that I'd like to make, and I have it -

THE COMMISSIONER:

Q. Okay. Yes, we'll let you do that a little later.

COFFEY, Q.C.:

Q. We'll come to that, Doctor.

DR. NEIL:

A. It should be done. Everything you just said should be done. I'd like to see it done.

THE COMMISSIONER:

Q. Okay, all right. We'll talk about it further later.

COFFEY, Q.C.:

Q. Doctor, while we're on this topic, rounds, do they occur in Corner Brook? Do pathologists take part in them?

DR. NEIL:

A. Are you referring to pathology rounds?

COFFEY, Q.C.:

Q. Yes, pathology rounds, yes.

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Okay.

Page 199

DR. NEIL:

A. We're a very small group of people.

COFFEY, Q.C.:

Q. And surgical pathology rounds, they don't occur in Corner Brook either?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. It's too small.

DR. NEIL:

A. There's no formal rounds per se.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. We are constantly in and out of one another's offices, discussing cases, and we all may be in one office for an hour.

COFFEY, Q.C.:

Q. Discussing a particular case?

DR. NEIL:

A. Discussing several cases.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. You can call that a round, if you like.

Page 200

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. I don't.

COFFEY, Q.C.:

Q. Doctor, rounds by telecommunications with, for example, St. John's.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Are there any rounds that occur that you can participate in, or your fellow physicians in Corner Brook can participate in that occur in St. John's?

DR. NEIL:

A. St. John's did start a tumour board round.

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. That I became aware of. I did attend one. At the time, the quality of the transmissions were so poor that I didn't attend any more. I think things have improved. I attended one, and one of my colleagues attended the same one. I think things have improved, but on a

Page 201

regular basis, we haven't been attending them. You must realize too that our workload does not dictate that we can spend this amount of time, you know, at any particular time attending rounds when there's a pile of work on this side of the table that needs to be done.

COFFEY, Q.C.:

Q. And before we break for lunch, I want to ask you about that, the pile of work. Doctor, over the years, the staffing level for the pathology department in Corner Brook, from the late 90s onward has been, I take it, four or five funded positions?

DR. NEIL:

A. When I started, there were three funded positions.

COFFEY, Q.C.:

Q. Three.

DR. NEIL:

A. When I started, there were two funded positions. I made it the third.

COFFEY, Q.C.:

Q. Okay, that was back in the 80s.

DR. NEIL:

Page 202

A. That was back in the 80s, and you have a table of the number of pathologists that we've gone through. I think the fourth position started in '95, and the fifth position started in 2004.

COFFEY, Q.C.:

Q. Okay, so there were four then really from '95 through '04?

DR. NEIL:

A. From '95 to '04, there were--yes.

COFFEY, Q.C.:

Q. Four funded positions?

DR. NEIL:

A. Four funded positions.

COFFEY, Q.C.:

Q. And then there's been another position added?

DR. NEIL:

A. A fifth one added in 2004.

COFFEY, Q.C.:

Q. Now that's positions?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. I'm going to ask you about, how about actually them being filled?

Page 203

DR. NEIL:

A. We have been short on numerous occasions. From 2004--sorry, from--could we bring up the document?

COFFEY, Q.C.:

Q. Sure, we certainly can.

DR. NEIL:

A. Because it would help me.

COFFEY, Q.C.:

Q. It's P-2271.

DR. NEIL:

A. When I did this, you asked me to do this, asked me to determine when pathologists started and when they finished. This was quite surprising to me actually how it turned out. You can see that the three top people have been there quite a long time, and as we added the fourth and fifth positions, if you look at a time line, those lines represent points in time that these people were actually there.

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. The turnover was tremendous and still

Page 204

continues to be tremendous, except for Dr. Karn and Dr. Luer who probably will stay. But the time frame, people come, they stay their required amount of time, which is usually two to three years, and then gone. My issue is recruitment to keep people in positions. It's been a constant, constant battle to keep people.

COFFEY, Q.C.:

Q. And it's your position that's responsible -

DR. NEIL:

A. It's my position. I take the initiative to find these people. I get help from Medical Services. They're very good at it, but I take the initiative myself to do this, and Dr. Cook has done the same thing, and he and I are both frustrated with this issue. The turnaround time or the time frame that these people have been here, it fulfils the requirements for their work, and then they're gone, and the line just drops off as we continue with addition of more pathologists, if you appreciate the way that table is working. I was quite surprised when I saw that.

COFFEY, Q.C.:

Page 205

Q. So at any one point in time, if the Commissioner wanted to, she could just simply go down through it and say, okay, you can tell at a particular point in time how many are there, just by looking down a column?

DR. NEIL:

A. That's right. Remember now, just because they're there, doesn't mean they're fully functional, because the person who arrives the end of this month, for instance, which we expect someone to arrive the end of this month, there's an orientation process. You have to get them used to their work environment, get them used to the procedures that we follow. So they might not be up and fully functional for maybe a month. So that cuts down the time frame, also takes away from my work and the work of other pathologists who have to acquaint these people with their jobs. It would be--an ideal situation would be people who come and stay, and we can get on with our work. That does not happen.

COFFEY, Q.C.:

Q. Now Doctor, is there any arrangement or has there been any arrangement over the years in

Page 206

Corner Brook, in terms of remuneration, whereby if the actual staffing level, filled staffing positions falls below a certain point, the remaining physicians get paid a certain amount more?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. How does that -

DR. NEIL:

A. That's through Department of Health and the way it works, and I can explain it from the positions of five. If there are two vacant positions and we are down to three people, we can get extra workload compensation, but it has to be a critical mass of three. So if we are paid for five and one person is vacant, no compensation.

COFFEY, Q.C.:

Q. The other four have to do the workload of the five and there's no extra money?

DR. NEIL:

A. Correct. If there are two people away, and it has to be for a period of seven days or more, the remaining three will be compensated for

Page 207

extra workload.

COFFEY, Q.C.:

Q. Is the compensation the equivalent of the other two, divvying up the other two people's money?

DR. NEIL:

A. No, the compensation is--I think the figure is 315 dollars a day, multiple that by the number of positions that are vacant, which is two.

COFFEY, Q.C.:

Q. 630, yes.

DR. NEIL:

A. 630, multiply that by the number of days the person was vacant, these people, these two people were vacant, which would be your total figure, and then you take that and divide it among the three that are left.

COFFEY, Q.C.:

Q. Okay. Doctor, DynaCare, you've referred to?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Is Corner Brook utilizing DynaCare?

DR. NEIL:

A. Yes.

Page 208

COFFEY, Q.C.:

Q. When did it begin to do so, do you recall?

DR. NEIL:

A. About two months ago.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. After we had spoken in Corner Brook.

COFFEY, Q.C.:

Q. Yes, in fact, you had just, I gather, made--were making the arrangements at the time.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. At the time we were there to interview you. Doctor, has Corner Brook, before this year, ever utilized an organization such as DynaCare?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Okay, so this sending out of large numbers of specimens for analysis has never occurred before?

DR. NEIL:

Page 209

A. No.
COFFEY, Q.C.:
Q. In the past, if the work was there -
DR. NEIL:
A. We pulled up our socks and went to work.
COFFEY, Q.C.:
Q. - had to do it. Now DynaCare, you're utilizing now?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. You have an arrangement in place. Is that envisaged that it will continue indefinitely or related to what your workload and staffing levels are or what?
DR. NEIL:
A. I envision it occurring indefinitely, with some provisions. When our fifth pathologist arrives, obviously we will reassess what we are doing. However, I don't expect it to stop when she arrives. Gamma DynaCare is providing a good service to us now, in the sense that external consultations or cases that we may have a little bit of difficulty with, cases that we need another opinion on, we don't have

Page 210

anybody else to send it to. We, over the years, relied on St. John's as an external consultant. Dr. Cook had called me, Dr. Denic had called me, not sure which one, but one of them, had called me several years ago and said "we can't handle this any more." They're overworked. "Please send your external consultations somewhere else." I appreciate what he was telling me. I had told our people not to do that any more.
COFFEY, Q.C.:
Q. Not to send the external consultations to -
DR. NEIL:
A. Not to send to Eastern Health, unless you absolutely had to. We were using--utilizing Halifax quite frequently. Earlier on this year, I had a letter from--her name escapes me for the moment, but the director there--saying "we are in the same predicament. We cannot handle external consultations. If you know somewhere else to send it, please do. If you absolutely have to send it, go ahead." So now I have no St. John's, no Halifax. I have to send it somewhere. So that's why I envision Gamma DynaCare taking over that role.

Page 211

COFFEY, Q.C.:
Q. And so what role or function are they performing now?
DR. NEIL:
A. Now? They are--it started off with dermatopathology cases. We have an active dermatologist in Corner Brook who is increasing our workload. We're not experts in dermatopathology. We have an expert in dermatopathology at Gamma DynaCare which we utilize. That's our main focus to start off. We also send other cases that we need their expertise in, but the main focus was skin pathology, but that has expanded to other areas, prostate, whatever our pathologists feel they need another external opinion on.
COFFEY, Q.C.:
Q. I'm sorry, what was it you said?
DR. NEIL:
A. Another external opinion.
COFFEY, Q.C.:
Q. You said one of them was--did you say prostate?
DR. NEIL:
A. It could be prostate. It could be anything.

Page 212

It depends on what our pathologist decides he, at the time now, wants or she, soon to be, decide they want to send.
COFFEY, Q.C.:
Q. Doctor, the funding for this, the funding source for this is what? What's being--whose budget is being utilized to do that?
DR. NEIL:
A. Ours.
COFFEY, Q.C.:
Q. Okay, that's Western Health's?
DR. NEIL:
A. Western Health.
COFFEY, Q.C.:
Q. Okay. If we could, please, Commissioner, I'd like to come back then and go through the 2005 ER/PR with the doctor right after lunch.
THE COMMISSIONER:
Q. Sure. We'll break until ten after two.
COFFEY, Q.C.:
Q. Thanks, Judge.
(LUNCH BREAK)
THE COMMISSIONER:
Q. Mr. Coffey.
COFFEY, Q.C.:

Page 213

Q. Yes, Commissioner, just before you came in, Dr. Neil said that there was something just over the lunch hour he had been just thinking about and he wanted to make a comment about, a comment you made this morning.
THE COMMISSIONER:
Q. Yes.
COFFEY, Q.C.:
Q. Doctor?
DR. NEIL:
A. Yes, I was talking about Ph and when we checked our pH on the commercially available formalin. I may have left you the impression that it was weeks, but it was actually a week, so days, not weeks. I said weeks, I do believe.
COFFEY, Q.C.:
Q. So after, you'd been checking it for the past week?
DR. NEIL:
A. Past week.
COFFEY, Q.C.:
Q. For the past week?
DR. NEIL:
A. Yes.

Page 214

COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. So it's just initiating.
COFFEY, Q.C.:
Q. It began just this past week?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay. If we could, please, and I appreciate the clarification, Doctor. Registrar, I believe there's a new exhibit, 2297 and 2298. Commissioner, if you'd -
THE COMMISSIONER:
Q. Entered.
EXHIBITS ENTERED AND MARKED P-2297 AND P-2298
COFFEY, Q.C.:
Q. And if we could open those. Well, 2297 will suffice, for my purposes. Doctor, this is a Western Memorial Regional Hospital pathology report. It's redacted, but there's one part of it, in particular, I wanted to ask you about. In addendum number one, it says it's entered 15/01/04, 11:09, which would be January 15th, 2004?

Page 215

DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And it reads "immunoperoxidase stains reveal estrogen receptors, poor quality of sections and staining preclude an assessment. Stain is non-contributory" and then "progesterone receptors positive in approximately 50 percent of the tumour cells. Sections are of poor quality and assessment is difficult." Addendum signed, signature on file, Dr. Andrew Luer, January 15th '04.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Now Doctor, you've indicated that on one occasion, Dr. Luer had spoken to you about a concern he had about a slide or slides. Do you know if this is the particular instance?
DR. NEIL:
A. No, it might.
COFFEY, Q.C.:
Q. It may or may not be.
DR. NEIL:
A. I just don't know.

Page 216

COFFEY, Q.C.:
Q. But is it--bearing in mind the context in which the conversation with him occurred before, is it possible that it was this sort of matter?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And you pointed out to the Commissioner that at the time it was raised with you, you directed him to deal with the lab that he got the slides from?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. The Health Sciences Centre.
DR. NEIL:
A. Health Sciences' technologist first and I guess, Dr. Ejeckam.
COFFEY, Q.C.:
Q. Yes, in '04, that would be.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. If we could, please, then, Registrar, Exhibit

Page 217

P-94--I'm sorry, 0492, please? Now what we have been dealing with in terms of the ER/PR matter in 2005, you know, the matter that brings us here today, Doctor, when did you first hear, and how, about this matter? About ER/PR being--you know, there was a problem with some stains, ER/PR stains in St. John's, when did you first hear about this? From whom?

DR. NEIL:

A. From Dr. Cook, Dr. Cook's memo.

COFFEY, Q.C.:

Q. Which is this memo here, I take it?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay, and that's why I brought it up. So before you got this memo, June 14th 2005, that's what it's dated, you had no--no one had ever phoned you or called you about this?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. And you are listed there as the second last entry in the addressees.

Page 218

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. And he writes indicating "we are aware of a number of negative estrogen and progesterone receptors that have converted on repeat testing with our new Ventana Benchmark immunoperoxidase testing." Doctor, when you got this, what did you understand by the--when he says "ER and PR that have converted on repeat testing"? Converted in this context meant what to you?

DR. NEIL:

A. Their values had changed.

COFFEY, Q.C.:

Q. Okay, and here he continues on. He says "presently we are in the"--well, he refers then to "false negatives -

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. - have occurred during the year 2002." So I take it that the change would be from a negative to a positive?

DR. NEIL:

Page 219

A. To a positive, correct.

COFFEY, Q.C.:

Q. Of some sort, and he says "we are in the process of retesting all negative ER and PRs for that particular year. We request that you," and you're one of the you's, "forward all negative ER and PR cases for the year 2002 to Mr. Dyer," Barry Dyer, and he looks for particular things, original ER/PR slides, controls, H & E slides and paraffin blocks. Doctor, when you first got this, what was your--well, first of all, when did you first get this, do you recall?

DR. NEIL:

A. The letter is dated June the 14th.

COFFEY, Q.C.:

Q. So it would have been shortly after?

DR. NEIL:

A. Shortly thereafter that.

COFFEY, Q.C.:

Q. Why I'm asking, in terms of you weren't on vacation for a month or so around that time?

DR. NEIL:

A. I was on vacation, but I would have been there in June.

Page 220

COFFEY, Q.C.:

Q. And then what was your initial reaction to this? Who did you share it with? How did you react to it? What did you believe or understand was required of you?

DR. NEIL:

A. Well, we had a little work to do. We had to gather the material that was asked for. So I discussed it with several people within the lab, including our managers, our secretaries, and those were the main people. I'm not sure if I discussed it with any of our technologists, but certainly our secretaries and our manager that was responsible at the time, that we had to gather these cases and submit them appropriately.

COFFEY, Q.C.:

Q. And did you inform anyone initially, like in June or July of 2005, you know, higher up in the organization?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Okay. Why not?

DR. NEIL:

Page 221

A. I did what I was asked to do and gather the material that I was asked to gather. I didn't think there was a need at the time to involve somebody in a simple task that I was asked to do.
COFFEY, Q.C.:
Q. Doctor, the second last sentence of the first paragraph reads "we will repeat all ER and PR receptors with the Ventana system and forward the results to you."
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. So I take it the results, in this context, were going to be what? Would they be the numerical number or the slides or both or what? He says "and refer the results to you." What kind of results were you looking to get or expect to receive? I'll just show you right here, Doctor. I'm sorry.
DR. NEIL:
A. Yes, yeah.
COFFEY, Q.C.:
Q. "We will repeat all ER/PR receptors with the Ventana and forward the results to you."

Page 222

DR. NEIL:
A. The results would be the number.
COFFEY, Q.C.:
Q. The number?
DR. NEIL:
A. Yeah.
COFFEY, Q.C.:
Q. So the reading of the slides?
DR. NEIL:
A. New report, a new report would be sent to us.
COFFEY, Q.C.:
Q. Because you would have done the original reports in '02?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And so you expected St. John's would create new slides and generate a report?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. With new numbers on it?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:

Page 223

Q. I shouldn't say new numbers, with numbers on it?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Did you contact anybody in St. John's about this at the time?
DR. NEIL:
A. No. I may have discussed it with Barry to say that I'd be submitted these cases.
COFFEY, Q.C.:
Q. Okay, and in terms of how many negatives--how many false negatives they had, why this--how they became aware of this and so on?
DR. NEIL:
A. No, no. I had a task to do, and I did it.
COFFEY, Q.C.:
Q. He says, refer to Dr. Cook or Bev Carter, so you didn't call Bev Carter at that point?
DR. NEIL:
A. No, I didn't.
COFFEY, Q.C.:
Q. Nor Don Cook, and you may have spoken to Barry Dyer?
DR. NEIL:

Page 224

A. I may have spoken to Barry for the logistics purpose of getting the paraffin blocks to him. I may not have, I don't honestly remember.
COFFEY, Q.C.:
Q. And I understand then, as time went on, we're going to see the memos or memo, you were asked to go back much further than 2002.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Perhaps you could then, overall, describe the process of trying to identify the patients who had had ER and PR tests done, you know, via Western Memorial? What physically was involved and what processes? Because you have told us too, there was an older computer system.
DR. NEIL:
A. We needed to generate a list of patients that had ER and PR done over the time frame from--well, if we're talking just 2002, that's a little different.
COFFEY, Q.C.:
Q. Yes, and I appreciate that's probably what you started to do in '02.

Page 225

DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Did you get the '02 one done before you were tasked with the larger task?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay, so perhaps then you could describe then kind of what the overall task became?
DR. NEIL:
A. The overall task.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. It would be much easier. So the overall task was to develop a list of patients that had ER/PR testing done from the time frame identified, 1997 to 2005. As I said earlier this morning, we had two computer systems. One was primitive, which we used for ten years, but it was primitive. It was not--it had a non-searchable database. We had that up until 1999 when Meditec came in. Meditec had a searchable database. It was easy to pick up

Page 226

patients in a searchable database because we had marked them with a marker that we could retrieve them easily. So these had an ER/PR marker on them.
COFFEY, Q.C.:
Q. Okay. So at the time Meditec was brought in in Corner Brook -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. - when you began to use the system, when you were doing an ER and PR test on a patient or ordering -
DR. NEIL:
A. We could mark that we did that.
COFFEY, Q.C.:
Q. There was a marker, and you were doing it.
DR. NEIL:
A. We were doing it and we could retrieve patients based on that, and you'll see in some of the documentation that I asked my expert in Meditec in the pathology module to retrieve those cases for me, which he did. So he gave me a list from 1999 up until the cutoff dates that we're talking about. So I had a list

Page 227

from that period generated through Meditec. The time prior to Meditec, the database was not searchable, so I had to find another way to get those patients' names. The listing of--or the ordering of ER/PR tests was done through a requisition, which we talked about. Those requisitions, luckily, had been kept. They were kept right back to the time frame that we were interested in. Our secretaries went through every requisition from 1997 up to '99 and past 1999 to generate another list. Anybody who had been ordered it on that requisition, we picked up.
COFFEY, Q.C.:
Q. For ER and PR testing?
DR. NEIL:
A. For ER and PR. So that's two ways. The third way, and there are three ways, there are three ways in total. The third way, any cancers that we diagnosed since I've been in Corner Brook have been registered with NCTRF. I made some phone calls, e-mails, can't exactly remember what it was, but to the Cancer Registry saying "I need a list" and I knew they had it because these were cancers we were

Page 228

dealing with, of patients who had breast cancer. So I had three lists by which I could cross-reference.
COFFEY, Q.C.:
Q. The list generated by the NC -
DR. NEIL:
A. NCTRF, the requisition forms and Meditec. So I had three lists.
COFFEY, Q.C.:
Q. The requisition form, Doctor, that search, did that--how far into '99, 2000, did that extend? You started, you know, in '97.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. But the search of the requisition forms, did that extend all the way up to '05?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay, so it overlapped in the Meditec time frame?
DR. NEIL:
A. It overlapped.
COFFEY, Q.C.:

Page 229

Q. Okay. I didn't understand that.
DR. NEIL:
A. Yes, it overlapped. The time frame that we were concerned with -
COFFEY, Q.C.:
Q. The requisitions were all searched.
DR. NEIL:
A. Requisitions covered the whole time.
COFFEY, Q.C.:
Q. And they were all searched?
DR. NEIL:
A. They were all searched.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. So I felt fairly confident that I had every body that I was asked to get.
COFFEY, Q.C.:
Q. Doctor, are you aware of any that were missed? Have you ever become aware of any that were missed?
DR. NEIL:
A. Occasionally there would be a case that would pop up and was my concern from day one that "I really hope I don't miss anybody" and I tried

Page 230

my best and I have since tried my best to pick up, from whatever source, is there any way that I would have missed anybody.
COFFEY, Q.C.:
Q. Doctor, on those occasions, how--I take it there were few that have--were missed?
DR. NEIL:
A. Few, very few. Very few.
COFFEY, Q.C.:
Q. On those occasions where that's come to your attention, how is it that it came to your attention?
DR. NEIL:
A. That's a difficult question to ask--answer. I really can't answer that.
COFFEY, Q.C.:
Q. You don't recall -
DR. NEIL:
A. How it came to my attention.
COFFEY, Q.C.:
Q. - as to how particular -
DR. NEIL:
A. There were several people and I really can't answer how they--each specifically came to my attention.

Page 231

COFFEY, Q.C.:
Q. Okay. In general though, was it self-identified patients?
DR. NEIL:
A. No, they weren't self-identified.
COFFEY, Q.C.:
Q. Okay, they weren't?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. There wasn't that.
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Because that's one thing the Commissioner has heard from--you know, from other patients, from witnesses and other people that they self-identified or its referred to in some of the materials, in the sense of they hadn't been contacted and therefore -
DR. NEIL:
A. Eastern Health may have contacted me, "is this patient on the list?" I'm speculating now, because I really don't know the answer.
COFFEY, Q.C.:

Page 232

Q. Okay. At the times that those patients were identified, did you make any inquiries as to why they were missed or how they could have been missed? You know, like why they wouldn't appear on a requisition form or they were on a requisition form and it got missed, did you make any inquiries in that regard?
DR. NEIL:
A. There could be, you know, clerical transposition, just not picking up the patient on the list when you were making up the master list. That could have easily happened.
COFFEY, Q.C.:
Q. So but an actual inquiry on a patient-by-patient basis wasn't made? It's just you were happy that you'd identified -
DR. NEIL:
A. I was quite confident that I had as many as I could possibly get, but there were occasional patients that did pop up later.
COFFEY, Q.C.:
Q. And when they were so identified, were they dealt with and put into the process?
DR. NEIL:
A. They were dealt with appropriately.

Page 233

THE COMMISSIONER:
Q. Dr. Neil, you indicated that you were able, post a certain era, to use Meditec to identify those places where there had been an ER/PR test conducted?
DR. NEIL:
A. Yes.
THE COMMISSIONER:
Q. Now was that because Meditec could do this or when Meditec was put into your operation, did somebody say to you "now what kind of fields do you want to be able to search?" and you identified those fields or what?
DR. NEIL:
A. We decided to mark -
THE COMMISSIONER:
Q. That was a decision made by you within your -
DR. NEIL:
A. Yes, Meditec could do it, and we made it do it. It was a part of Meditec that was useable in that sense, that if we wanted to tag certain patients for any reason at all, you could do that.
COMMISSIONER:
Q. But that would have had to have been a

Page 234

decision made when Meditec came in, I assume? Do you see the difference in what I'm saying.
DR. NEIL:
A. Yeah.
COFFEY, Q.C.:
Q. Is it that Meditec was capable of doing that, and when Meditec was put in, there it was, or did somebody when they were instituting Meditec in your hospital, come along to your division and say, okay, now we have all these possibilities, do you want us to make sure they're operational in your Meditec System and what kind of things would you like to be able to search, and you might have said, oh, ER/PR?
DR. NEIL:
A. It was part of Meditec when it was brought in.
COMMISSIONER:
Q. Okay, thank you.
DR. NEIL:
A. That feature is in Meditec.
COFFEY, Q.C.:
Q. Did you have to turn it on, as it were, or pick it as one feature we want?
DR. NEIL:
A. I'm not an expert in Meditec, but I know we

Page 235

told Meditec -- we knew we could search based on markers.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. And that was a function of Meditec.
COFFEY, Q.C.:
Q. If you identified one or more markers that you wanted --
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. You knew that if you told Meditec that, the people who were installing it, that they could do that?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. I think what the Commissioner is perhaps asking is then did you identify ER and PR breast cancer --
DR. NEIL:
A. We identified ER and PR as a marker we wanted to have.
COMMISSIONER:

Page 236

Q. But did you do that when they were putting Meditec in?
DR. NEIL:
A. Yes.
COMMISSIONER:
Q. Oh, okay. So when it was originally being installed in Western, presumably somebody would have said look what we can do?
DR. NEIL:
A. Yes.
COMMISSIONER:
Q. And what of these things would you like us to do as opposed to their coming in and saying here's the package, you're getting this whether you want it or not? Do you know what I mean, because it's one thing for a system to be imposed and then three years later you say, ah, okay, that could do that.
DR. NEIL:
A. I understand.
COMMISSIONER:
Q. And can we now use it, as opposed to somebody coming in and saying we have this new system which has these capabilities and we'll give you this perhaps for a fee, or perhaps not, if

Page 237

you wanted to, but we won't bother to give you everything if you're not going to use it?

DR. NEIL:

A. It was always there. We decided to turn it on.

COMMISSIONER:

Q. All right.

COFFEY, Q.C.:

Q. Exhibit P-0928, please. Doctor, these are minutes of a pathology working group, July 20th, 2005. The attendees include, amongst others, yourself, and other physicians and non-physicians. This, I take it, was a working group that was dealing with trying to improve remuneration for pathologists.

DR. NEIL:

A. Might I see the rest of the document, please?

COFFEY, Q.C.:

Q. Oh, sorry, Doctor. It refers to the need for entry level provincial salary comparisons to be included in conjunction with the average provincial salaries already detailed and so on.

DR. NEIL:

A. Yes.

Page 238

COFFEY, Q.C.:

Q. The Commissioner has already seen this. What I wanted to ask you about is were you involved in this effort?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay, and that's -- you were involved why? I'm not going to ask you in detail about your involvement in it, but just --

DR. NEIL:

A. I'll go back to the beginning and see who was there. I was involved because of my position. Dr. Morris Dalton was in Grand Falls, I was in Corner Brook, Nash Denic was in St. John's, and our positions across the province as lab directors.

COFFEY, Q.C.:

Q. And then as time went on, you participated in the efforts of this group to prepare the report and so on?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Exhibit P-2233, please. Doctor, this is a memo of July 28, 2005, from Dr. Cook again to a number of lab directors, including yourself, and there's handwritten, "please copy and circulate to all pathologists, P. Neil, August 17 '05".

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay, and this indicates -- it's related to HER2/neu, but it concludes by saying, "As a reminder when choosing blocks to send for both hormone receptor testing and HER2/neu testing, please select the section that contains both tumour and normal or benign epithelium. The normal and/or benign epithelium acts as an internal control for the immunohistochemical staining". Signed, Donald Cook. Doctor, by July 28th, 2005, I take it you were aware that internal controls should be utilized for ER and PR?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And HER2/neu. Now, Doctor, by this time, the end of July, 2005, and you only actually got

Page 240

to distribute it, I believe, the middle of August --

DR. NEIL:

A. I was away in July.

COFFEY, Q.C.:

Q. Yes. Doctor, having received that June 14th memo from Dr. Cook, and possibly talking to Barry Dyer, did you hear anything further throughout the main part of this, and you were gone in July -- so before you went, did you hear anything further from Dr. Cook?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. You came back.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. When did you next hear of this ER/PR matter?

DR. NEIL:

A. The first part of September.

COFFEY, Q.C.:

Q. Okay. If we could, please, Exhibit P-2234, please. Just a moment, please, Commissioner. Now perhaps we'll just use this -- this is a

Page 241

memorandum from yourself, Doctor, to all pathologists and pathology secretaries, August 23, 2005.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And it's ER/PR and HER2/neu, and you write, "As per my conversations with Dr. Donald Cook, Clinical Chief in St. John's, please be advised that they are temporarily discontinuing the ER/PR immunohistochemistry as of today and will be referring all cases to Toronto", and it says "see attached". "I've asked Maureen to type a similar template for our use as per Dr. Cook's previous memo on HER2/neu. This analysis should also be done in the same block. Please try to select blocks that include normal breast tissue for internal controls. Thanks". So this reference here to "as of today they are temporarily discontinuing ER/PR IHC", this would have been as of August 23rd?

DR. NEIL:

A. Yes. My previous comment, September, was a written memo.

Page 242

COFFEY, Q.C.:

Q. Okay, yes.

DR. NEIL:

A. I had spoken to Dr. Cook concerning the issue that day.

COFFEY, Q.C.:

Q. And I think -- I gather Dr. Cook had called you and effectively gave you a heads up?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. That there was a memo coming?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. If we could, please -- one second, please, Commissioner. If necessary I'll come back to it. It's just a reference Dr. Cook had in handwritten notes to his conversation with you, and, in fact, it recounts having given you a heads up that they were stopping the testing and would be going further, I think, with the retesting matter. Perhaps scroll down. Page 2, it's on the same -- thank you, Mr. Simmons. This is it. Dr. Neil, you

Page 243

wouldn't have seen this before, Dr. Neil, I wouldn't anticipate, but you see the note here, "Spoke to Paul Neil, August 23rd, 2005".

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. "Concentrate on the '99 to 2000 (sic.), four years, current cases refer directly to Mount Sinai. Sent name of contact individual at Mount Sinai".

DR. NEIL:

A. Correct.

COFFEY, Q.C.:

Q. So I take it that he referred you to a lady, Maria Mendes?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And this suggests here by this point in time that Dr. Cook was thinking of a much wider scope than 2002?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. '99 to 2004 here to concentrate on. Doctor,

Page 244

when Dr. Cook first told you, look, this is going to cover a much wider time period than '02, did you ask him about what was going on? Did you have a conversation about it or did he tell you about why?

DR. NEIL:

A. Nothing more than what was already discussed here with regards to the problems they were having with their automated immunostainer.

COFFEY, Q.C.:

Q. And that was in that June 14th letter?

DR. NEIL:

A. That was the extent of the conversation.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. Much of the conversation, as I recall, was about how and what we were to do.

COFFEY, Q.C.:

Q. As opposed to why whatever happened in St. John's to cause --

DR. NEIL:

A. Whatever happened in St. John's was a -- in my perception and my recollection of the discussion, it was a St. John's issue. I had

Page 245

my own thing to deal with, which was the task put before me, and I had to deal with it.

COFFEY, Q.C.:

Q. The execution of which you just described to the Commissioner.

DR. NEIL:

A. The execution which I just described. Part of it I just described. There's a lot more to it than that.

COFFEY, Q.C.:

Q. Doctor -- and so he didn't elaborate any more upon why they couldn't continue to do the ER/PR in St. John's?

DR. NEIL:

A. No. It wasn't my focus and it wasn't his. To discuss with me -- I'm sure it was his focus.

COFFEY, Q.C.:

Q. Doctor, was it brought to your attention that summer, going into September, that at least some pathologists in St. John's or groups of pathologists in St. John's in August, 2005, had concerns about this investigation that was going on as to how it should be conducted?

DR. NEIL:

A. No.

Page 246

COFFEY, Q.C.:

Q. And did the topic of informing patients about this come up at that point in time?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. It hadn't come up, I take it, in June?

DR. NEIL:

A. Pardon me?

COFFEY, Q.C.:

Q. It hadn't come up in June when you -- to yourself, when you got the letter in June, "I have to tell my patients or tell our patients about the fact this is going on"?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. And then when you spoke to Dr. Cook on August 23rd, it didn't come up either?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. When did the idea or concern, or any concern or idea about contacting patients or informing them about the fact this was going on, that's

Page 247

Western's patients --

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. When did that first arise, do you recall?

DR. NEIL:

A. My involvement in contacting patients was nil.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. My involvement in deciding when patients were to be contacted, how they were going to be contacted, the whole issue of disclosure, was not part of my mandate, not part of my --

COFFEY, Q.C.:

Q. Were you ever consulted about it?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Within Western's -- from Western's perspective and within Western, who would you identify as the person or persons tasked with that?

DR. NEIL:

A. There are various people in Western that would be involved with disclosure.

Page 248

COFFEY, Q.C.:

Q. That would be?

DR. NEIL:

A. VP of Medical Services.

COFFEY, Q.C.:

Q. Dr. Jenkins?

DR. NEIL:

A. Dr. Jenkins. There's a girl by the name of Bonnie Walker, who's in quality management, I believe.

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. I don't know what her title is. The whole department, and I can't give you names.

COFFEY, Q.C.:

Q. Okay, people actually involved in the nitty-gritty of it.

DR. NEIL:

A. Nitty-gritty of it.

COFFEY, Q.C.:

Q. And decisions as to whether or not it should occur, and if so, the timing and the manner, that would be the senior management?

DR. NEIL:

Page 249

A. That's the senior management team. That was their issue, not mine.
COFFEY, Q.C.:
Q. That would be the CEO?
DR. NEIL:
A. The CEO and whoever they had involved in that whole process, which was not part of what I was involved in.
COFFEY, Q.C.:
Q. Exhibit P-1699, please. Now, Doctor, here there's some e-mails of August 26th through August 31st. The first of them is from yourself, August 26th, 2005, to Maria Mendes, copied to Frank Holloway. Who's Mr. Holloway?
DR. NEIL:
A. Frank Holloway was the Regional Director of Laboratory Services at the time.
COFFEY, Q.C.:
Q. And he had been the Regional Director for a period of years before that?
DR. NEIL:
A. Yes, I think Frank started in 2002 as Director.
COFFEY, Q.C.:
Q. Okay, and who was the director before that?

Page 250

DR. NEIL:
A. Judy Gash.
COFFEY, Q.C.:
Q. And Mr. Holloway, you said he was -- is he any longer?
DR. NEIL:
A. He's retired.
COFFEY, Q.C.:
Q. He's retired. When did he retire? I didn't mean to put you on the spot. Was it fairly recent?
DR. NEIL:
A. Pretty recent. I'm trying to remember to get a date. June, probably 2006.
COFFEY, Q.C.:
Q. Okay, and he would have been then retired when most of the actual work of identifying the patients and so on had been concluded by then, June '06?
DR. NEIL:
A. He had some involvement in it, yes.
COFFEY, Q.C.:
Q. Before he retired, he would have been involved.
DR. NEIL:

Page 251

A. Before he retired, he still had some involvement in it.
COFFEY, Q.C.:
Q. You've written here, "As per our conversation, we would appreciate ER/PR and HER2/neu, IHC on our breast tissue cases from this hospital. And as you are aware, Dr. Cook in St. John's has been doing these for us, but has suspended this temporarily. As you will be doing his, we need to send you ours as well. You will note in 2004 we had approximately 40 cases. We anticipate that 2005 will be no different; however, our oncologists want HER2/neu on all the cases now, so we anticipate the same number of these. I would appreciate more information on how to submit these cases, as well as costs as we have to budget for the amount. I assume the best mode on transport would be courier." And you say "Please contact me if you need anything further." Then there's an e-mail from Ms. Mendes to Dr. Brendan Mullen and Dr. Frances O'Malley concerning your request and then there's another e-mail here from internally within Mount Sinai dealing with the logistics, I take

Page 252

it, internally of how they're going to deal with this and the billings for it. So, Doctor, the idea of utilizing Mount Sinai was suggested by Dr. Cook.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And had you ever dealt with Mount Sinai before this?
DR. NEIL:
A. Not for anything like this, no.
COFFEY, Q.C.:
Q. Okay, and you found it acceptable to take his suggestion and utilize it.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. If we could, Exhibit P-1701? And Doctor, this memo suggests you were nothing, if not persistent. There's an e-mail September 1st, 2005 to Ms. Mendes saying, "Please advise if you can handle these cases. I need to send, as we now have a few new cases pending"--and I can see that explains the persistence, and then there's a response the same day from

Page 253

Maria Mendes, apologizing for not getting back to you sooner, you can go ahead and send the cases to the address she sets out.

DR. NEIL:

A. I should apologize to her for the bold print. I hope she didn't think I was shouting.

COFFEY, Q.C.:

Q. "The cases will be entered as consults and will be reported as such." So the cases were to be sent to Frances O'Malley, to her attention. So, Doctor, I take it then and in terms of current cases, that was what was done, you just simply, as current cases came along, you'd fill out the appropriate form -

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And courier the blocks and wait for the results.

DR. NEIL:

A. That was the arrangement I made back at that time and that is the arrangement we still have today.

COFFEY, Q.C.:

Q. And while we're on the topic, Doctor, Eastern

Page 254

Health has or did in February of 2007 resume ER and PR testing.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. I gather, based upon evidence we heard a week or two ago, that, well two weeks ago now, that they have started to utilize Mount Sinai themselves, again, for that purpose.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Why in 2007 did Western Health not go back to utilizing Eastern Health for ER/PR?

DR. NEIL:

A. Two reasons: first reason has to do with workload. Eastern Health were very short of pathologists and still are. We were asked several years ago to discontinue our consultations, as we discussed this morning. To be asked to re-instate and send more work into an institution that had already told us they're overworked, didn't make sense to me. We're getting good service from Mount Sinai, which is really the second reason I didn't

Page 255

send it back, so there are really three reasons. We were getting good service from Mount Sinai, excellent service from Mount Sinai; Eastern Health was overworked; and the third reason, we really wanted to have this inquiry over and dealt with, recommendations made and then make a decision as to what we were going to do. So wait until everything is said and done and then reassess. Sounds like a good decision on my part because we would have had to have gone back to Mount Sinai anyway.

COFFEY, Q.C.:

Q. As it turns out.

DR. NEIL:

A. So retrospectively, it turned out okay.

COFFEY, Q.C.:

Q. And so the initial decision, I take it in February of '97, and March '97 and April--'07, I apologize, February, March and April of '07, the initial decision not to return to Eastern Health for ER and PR was based upon the idea of good service from Mount Sinai and workload issues in St. John's.

DR. NEIL:

Page 256

A. Yes.

COFFEY, Q.C.:

Q. Because the Inquiry didn't even exist at that point, but since the Inquiry has come on, certainly you've decided that you're going to wait for the outcome of that.

DR. NEIL:

A. That's correct.

COFFEY, Q.C.:

Q. Doctor, if we could, please, Exhibit P-0590? Doctor, this is a memo of September 6th, 2005, again it's to all lab directors, including yourself, lab directors across Newfoundland and these lab directors, here you're described as a lab director, it's interesting because it says "all lab directors:" and there's a listing.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And, of course, they're all physicians with the exception of Dr. Williams is a physician wouldn't be a lab director.

DR. NEIL:

A. No, that's correct.

Page 257

COFFEY, Q.C.:
Q. I'm going to ask you about that, Doctor, you would have understood, if you had been following the Inquiry at all, would understand that the reporting structure within St. John's, within Eastern Health in terms of clinical chief and the technologist's lead, as it were, has changed. You understand the reporting structure has changed in St. John's?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Has it changed in Western?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Has any consideration been given to changing, do you know?
DR. NEIL:
A. You're aware what the situation is today?
COFFEY, Q.C.:
Q. In Corner Brook? Perhaps you could tell us, the current situation in Corner Brook, is what? You report to?
DR. NEIL:

Page 258

A. I report to the VP Medical Services.
COFFEY, Q.C.:
Q. Yes, and the technology -
DR. NEIL:
A. The regional director of laboratory services reports to the VP of Medical Services.
COFFEY, Q.C.:
Q. Yes, and that regional director of laboratory services is a technologist senior position?
DR. NEIL:
A. Is a technologist, yes.
COFFEY, Q.C.:
Q. And that's the system that used to exist in St. John's, I gather up until relatively recently.
DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. I'm given to understand from the evidence we've heard, Dr. Denic is now in charge here in St. John's, the technologist senior one reports to him and he reports to VP Medical, so that hasn't changed in Corner Brook.
DR. NEIL:
A. No.

Page 259

COFFEY, Q.C.:
Q. I take it there's been no thought given to it and no perceived need for it to change?
DR. NEIL:
A. No perceived need.
COFFEY, Q.C.:
Q. Now, Doctor, here, this September 6th memo, ERs and PRs is the subject matter. "I wish to advise you that we are doing a review of our estrogen and progesterone receptors. I expect to have more information within the next few weeks, I'll keep you updated. Please note the following points"--and here it's spelled out in quite some detail as to the parameters of what is being requested of you. Doctor, and it refers here in the second page to the hold on current reporting of current cases and suggests that perhaps you might want to go to Mount Sinai or a lab of your choice. Doctor, when you got this in September 6th, did you have any understanding by this point in time, by September 6th, as to how long this process might take, the retest process?
DR. NEIL:
A. The retest process?

Page 260

COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. No, but considering the magnitude of--or not the magnitude, the number of cases that had to be looked at over that period of time, it wasn't going to be a task that was going to be completed very soon.
COFFEY, Q.C.:
Q. So from your perspective at the time, had you actually given any thought as to how long this would likely take?
DR. NEIL:
A. I thought it would take many weeks, maybe even months.
COFFEY, Q.C.:
Q. I take it, it was going to take even a while for your own organization to identify all the patients and get all the blocks pulled and the material.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. That was going to take time itself.
DR. NEIL:

Page 261

A. That would take a significant amount of time.
COFFEY, Q.C.:
Q. And then the process of retesting of all these samples would take time -
DR. NEIL:
A. Would probably take longer.
COFFEY, Q.C.:
Q. Now, Doctor, when we look at the very end of this, the last paragraph refers to "the status of the Ventana system will be determined when we review correlations of the ER and PR results from Mount Sinai and Montreal General Labs." And they refer to "as a precautionary measure, we are awaiting reports for medical and technical consultants before we operationalize the Ventana system." Doctor, having received this memo in September of 2005, did you have any--or how were you feeling, yourself, as a pathology director at Western concerning what you might be facing here, in terms of potentially changed results, they apparently didn't know what the problem was at this point in time. What was your--sitting in Corner Brook, what was your view of it?

Page 262

DR. NEIL:
A. My feeling is that you know you have a problem when it's placed before you. In this particular case, we were retesting. We knew that there were some problems. I didn't know what the magnitude of the problem was. My focus was to prove we have a problem first and deal with that problem later. When you define what your problem is, you deal with that and you know you have the magnitude of the problem.
COFFEY, Q.C.:
Q. I take it when you get some results.
DR. NEIL:
A. When you get some results. So the task before me was to get the material to the appropriate place in a timely manner.
COFFEY, Q.C.:
Q. Doctor, when did you first become aware of the magnitude of what turned out to be the problem?
DR. NEIL:
A. I guess it's when some of the results started coming back and we were debriefed by Nash Denic, gave us some information as to what the

Page 263

numbers actually were.
COFFEY, Q.C.:
Q. And when was that, do you recall?
DR. NEIL:
A. There's a memo in your files.
COFFEY, Q.C.:
Q. We'll come across that, was it Nash or was in Don Cook, do you know?
DR. NEIL:
A. Nash.
COFFEY, Q.C.:
Q. Nash Denic, okay. And Nash Denic at that time was in what position?
DR. NEIL:
A. He took over from Don.
COFFEY, Q.C.:
Q. Okay, so he had become clinical, acting clinical chief anyway by then?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. So by that point in time, Corner Brook would have already begun to get some of its own results from the retesting -
DR. NEIL:

Page 264

A. The results started coming back very slowly.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. We were getting results back.
COFFEY, Q.C.:
Q. And we'll come to that then. If we could please, Exhibit P-2235, please. Now Doctor, this is an e-mail--I alluded to this earlier, it's September 16th, 15th and 16th, 2005 and I take it this is--it's printed on your e-mail system, can see it up here.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, what sort of circumstances did this involve din the sense of, because it refers to clear cutoff rates and so on. What's going on here, if you could explain to the Commissioner?
DR. NEIL:
A. As I mentioned to you this morning, the discussion group that I participate in can pose all kinds of question as subject matter. As I was reading or checking my e-mails, as I

Page 265

usually do every morning, I came across some subject matter relating to Ventana, ER/PR cutoffs, that sort of thing. I said this sounds like something I should probably be printing off and putting in my ER/PR file because it might be helpful in the future. So, I came across several of these which we have one in front of us.

COFFEY, Q.C.:

Q. Yes. I take it, this wasn't something you went looking for.

DR. NEIL:

A. No, this just happened to show at the same time.

COFFEY, Q.C.:

Q. Okay. Doctor, you said, your ER/PR file. Did you have, literally, a physical file?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. When did you start that?

DR. NEIL:

A. I've had it for a while.

COFFEY, Q.C.:

Q. In terms of--well, this dates back to

Page 266

September 2005. Did you start it before the June '05 memo from Dr. Cook or was it the September 6th one that perhaps occasioned an ER/PR file or did you have one anyway?

DR. NEIL:

A. I've had it for a while. I don't know how long I've had it.

COFFEY, Q.C.:

Q. Okay. And if we could, please, Exhibit P-2236. I take it this is a similar sort of e-mail as to the one we looked at before, September 16th, 2005 this one is.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And it also, the text of it does refer to this National Institutes of Health Consensus Statement in 2000 and dealing with cutoffs and so on. So, Exhibit P-2237, please. I take it this is another e-mail of the same, September 16th, similar.

DR. NEIL:

A. Similar. What happens in these e-mails that someone will read one and then make a response to it. So, you may get three or four the same

Page 267

day. You usually do get three or four the same day because people are talking.

COFFEY, Q.C.:

Q. And in effect, these are snapshots of the conversation.

DR. NEIL:

A. These are snapshots of the conversations.

COFFEY, Q.C.:

Q. Have you utilized this as a tool yourself to pursue particular -

DR. NEIL:

A. I have on occasion, yes.

COFFEY, Q.C.:

Q. Okay. Have you found it useful?

DR. NEIL:

A. Very useful. It also helps in recruitment.

COFFEY, Q.C.:

Q. Doctor, with respect to that, how widely known is the existence of this in Corner Brook, in the pathology community?

DR. NEIL:

A. People in Corner Brook know I use it. I can't tell you if anybody does. I don't think so, but I have had occasion to speak to people to say that I use this.

Page 268

COFFEY, Q.C.:

Q. Exhibit P-1780, it's a letter of September 26th, 2005 from Dr. Brendan Mullen to yourself and I take it, this is Dr. Mullen's formal letter setting up the arrangements with Western as to ER/PR and HER2/neu status testing.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay. So, in effect Doctor, this refers to for cases requiring FISH assessment of the HER2/neu status, the hospital will be billed $400.00.

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. And he says that less than 20 percent of cases required FISH confirmation. Doctor, do you know how much the ER and PR and HER2/neu status testing costs Western when Mount Sinai does it? How much per patients?

DR. NEIL:

A. It's my understanding and you'll read from that letter that they bill MCP.

Page 269

COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. They bill us for the HER2/neu.
COFFEY, Q.C.:
Q. And the ER/PR is billed through MCP.
DR. NEIL:
A. That's my understanding.
COFFEY, Q.C.:
Q. Which doesn't, in effect, get billed to your budget.
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. But the HER2/neu test -
DR. NEIL:
A. Yes. Why that occurs, I don't know. That's what occurs.
COFFEY, Q.C.:
Q. And the actual financial nitty gritty of this within your organization is dealt with my whom? You referred to the lab director.
DR. NEIL:
A. The bills sometimes come to me which I quickly pass onto somebody else.

Page 270

COFFEY, Q.C.:
Q. Who do you pass it -
DR. NEIL:
A. It's usually the lab manager associated with pathology.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. If not, then the regional director.
COFFEY, Q.C.:
Q. Exhibit P-2238 please. Doctor, there are several e-mails of September 29th and 30th, 2005. The first of them is from September 29th, it's from Heather Predham, Susan Sullivan and J. Budgell. Who's that, J. Budgell -
DR. NEIL:
A. I don't know.
COFFEY, Q.C.:
Q. Okay, that would be central, I take it. And then it's from Susan Sullivan to Kelli O'Brien. Do you know Ms. O'Brien?
DR. NEIL:
A. Um-hm.
COFFEY, Q.C.:

Page 271

Q. Who is she?
DR. NEIL:
A. Kelli O'Brien is one of our VPs. She's on the senior management team. I don't know if she was at that time, but that's where she is now.
COFFEY, Q.C.:
Q. And here, she begins by saying, "Hi Kelli, I just spoke to Heather, this is apparently hitting the media today and George Tilley is going to contact the CEOs re: this matter. And I wanted you to be aware so that you can share with your senior person, people responsible for lab such that they can follow up. Regards, Sue". And Ms. Predham's e-mail had begun with "We have had an issue with our ER/PR testing and this has been an issue we have been dealing with all summer" and it goes on. And refers to, amongst other things, we have had external reviews done on our Ventana machine on the pathology side of the service and the technical side". And she concludes by saying, "why am I telling you two all this? Well, since June, Dr. Cook, our chief of pathology requested that your two boards send in your blocks to be retested at Mount Sinai.

Page 272

To no avail"--I take it that probably says--"I wanted to give you a heads up. We have to begin to inform people individually about this issue, but the Department of Health wants us to make a public statement. Since your labs have not responded yet to our request, you may be asked about the reasons why. What do you think"?
And then Doctor, Ms. O'Brien, Susan Gillam--now, Susan Gillam is whom?
DR. NEIL:
A. Susan Gillam is the CEO.
COFFEY, Q.C.:
Q. Of Western?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Copies it to Ken Jenkins, September 30th and she writes, "Hi Susan, do you want me to follow up with the lab and Dr. Neil so that response can be prepared? I've cc'd Ken, but realize he's off today. Do you wish me to contact as well" and then Dr. Jenkins responds. And he says, "I heard about this for the first time at the med directors

Page 273

meeting yesterday. There was no indication this would be hitting the media today and he says this will be a very sensitive and complicated issue to communicate. Dr. Neil will need to be involved. I suggest Heidi should contact him immediately". Now, Doctor, were you contacted about this, the fact that it was going public and what were you told about it?

DR. NEIL:

A. I knew it was going public. I don't have a huge recollection of what I was told at the time, but I knew that the issue was going public.

COFFEY, Q.C.:

Q. Okay. So Doctor, what if any difference did that make to you in your role at that point?

DR. NEIL:

A. None really.

COFFEY, Q.C.:

Q. What was going on at that point, internally in the hospital in relation to this?

DR. NEIL:

A. The is September 30th.

COFFEY, Q.C.:

Page 274

Q. Yes.

DR. NEIL:

A. We would have been actively trying to complete the tasks that we were asked to do in the September 6th memo.

COFFEY, Q.C.:

Q. Now, in September when you got that September 6th memo, had you made anyone senior to you in the hospital aware?

DR. NEIL:

A. Yes, Dr. Jenkins.

COFFEY, Q.C.:

Q. So, Dr. Jenkins--do you recall when you told him about this?

DR. NEIL:

A. Not the date, no.

COFFEY, Q.C.:

Q. And had he known about it before September 29th, do you think?

DR. NEIL:

A. I honestly don't know if he did.

COFFEY, Q.C.:

Q. Pardon me?

DR. NEIL:

A. I don't honestly know if he did or not.

Page 275

COFFEY, Q.C.:

Q. Now, the exhibit P-2241 is a letter of October 6th, 2005 addressed to Barry Dyer from yourself. Doctor, I take it, this is a letter, cover letter as it were, telling him "please find enclosed the ER/PR negative cases for the year 2002".

DR. NEIL:

A. That's correct.

COFFEY, Q.C.:

Q. And you indicate, "I've included a list of names, some of which I have kept slides for reasons outlined on this sheet, but I've included the report if you need to review". Now Doctor, at this point in time, that is, early October, were you sending material related to deceased patients?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. I take it that was because you understood -

DR. NEIL:

A. My understanding was we would not be doing that at this time. We were concentrate on the patients, obviously, the living patients.

Page 276

COFFEY, Q.C.:

Q. And how did you identify that put aside then the -

DR. NEIL:

A. Sometimes it was very difficult. I had access to MediTec, what we refer to patient-to-patient care inquiry, PCI. As a physician you can access patient records. So, I could access patient records and determine from that whether or not this patient was deceased or not. Often I would find deceased patients. I'd write deceased next to their name and that would be--I'd move onto the next one.

COFFEY, Q.C.:

Q. Doctor, how successful were you, in hindsight, in actually identifying people, deceased patients?

DR. NEIL:

A. I think I did a good job of it.

COFFEY, Q.C.:

Q. There were--Western, in fact, sent in very few, in the initial round or round of submission of material.

DR. NEIL:

A. It was a lot of work.

Page 277

COFFEY, Q.C.:
Q. But very few deceased patients were sent in.
DR. NEIL:
A. Um-hm.
COFFEY, Q.C.:
Q. If we could, Exhibit P-2242. Doctor, these are a couple of e-mails. The first is from Susan Sullivan to Kelli O'Brien and Ken Jenkins, October 6th and this is sending a Globe and Mail, a reference to a link to a Globe and Mail story involving this matter. And then, I take it, this is an e-mail from Doctor Jenkins to yourself, "for your information, please feel free to share with the staff. We need to keep the momentum going to get our samples in. Sincere thanks to all who are making the extra efforts to deal with this".
DR. NEIL:
A. Um-hm.
COFFEY, Q.C.:
Q. And if we could, please, Exhibit P-2243, October 7th, 2005, this is the cover letter sending the 2000 cases into Barry Dyer?
DR. NEIL:

Page 278

A. Yes.
COFFEY, Q.C.:
Q. Okay. If we could, Exhibit P-2244, please. Now Doctor, there are several e-mails here, two e-mails here, but one of them--the first is October 7th, it's from Diane Smith at Eastern Health to, amongst other, Dr. Jenkins and it's communicated regarding your peer testing. "Please see attached communique from Dr. Paul Gardinar regarding the ER/PR testing issue". Dr. Jenkins then on the 11th of October forwarded it to H. Spark and yourself and others saying "please print the attachment for the ER/PR file and forward a copy to all docs in the region. Thanks". So Dr. Gardiner's letter, I take it, was distributed in the Western region.
DR. NEIL:
A. Yes, it was.
COFFEY, Q.C.:
Q. Exhibit P-2245, please. Doctor, this would be Tuesday, October 11, 2005 letter sending Mr. Dyer a covering letter, the 2001 cases.
DR. NEIL:
A. Correct.

Page 279

COFFEY, Q.C.:
Q. It would be the day after the Thanksgiving weekend, I take it. "P.S. there are a few ER/PR slides that we have to located which we will forward in due course. All documentation is on a working sheet". Now, this working sheet, Doctor, what was that?
DR. NEIL:
A. That working sheet was the best thing I ever did. That working sheet contained patient name, number, number of H&E slides, the ER slide, the PR slide, whether there were any controls with that slide. It was a table, per se.
COFFEY, Q.C.:
Q. A spreadsheet.
DR. NEIL:
A. A spreadsheet, in effect, that I had for each particular year. It became our working sheet. And these were all the patients that identified as ER/PR patients for those particular years. Everyone was included in that. I reviewed all of those patients, making notes on the right hand side next to each patient, clinical notes that would

Page 280

determine whether or not I would send that particular block for retesting, based on the criteria in the September 6th letter. Obvious ER cases that were obviously positive, I would write on the left hand side of the column next to the patient name, "keep, no need to send". these didn't meet the criteria.
COFFEY, Q.C.:
Q. In other words, it had been reported, for example, obvious ER 80 percent.
DR. NEIL:
A. 80, obvious cases. Anything that was questionable, whether it met the criteria--if it did meet the criteria, fine, I would send it. If it was questionable, I would send it anyway. So, that was our working sheet. We have those for each particular year.
COFFEY, Q.C.:
Q. And Doctor, was this computerized, this sheet?
DR. NEIL:
A. The names on the spreadsheet are on the computer, my personal notes are handwritten.
COFFEY, Q.C.:
Q. Okay. And I take it, were you able to add names to the spreadsheet if you wanted to

Page 281

create another one?
DR. NEIL:
A. Yes, I could add a name.
COFFEY, Q.C.:
Q. Okay. Well, "questionable", when you say where there was a questionable case, what do you mean by that?
DR. NEIL:
A. Well, I wasn't sure that it actually met the criteria and it was a borderline number according to the criteria in the September 6th letter.
COFFEY, Q.C.:
Q. Like, for example, I take it, ten percent -
DR. NEIL:
A. Ten, I'd probably send that.
COFFEY, Q.C.:
Q. Okay. If it the cutoff stipulated in the letter was ten percent, you would send the ten.
DR. NEIL:
A. I'd send the ten.
COFFEY, Q.C.:
Q. How about if it was, for example, 20, the report was ER--in 2002 an ER of 20. Would you

Page 282

send that?
DR. NEIL:
A. If the cutoff -
COFFEY, Q.C.:
Q. Was ten.
DR. NEIL:
A. If the cutoff was ten?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. And the patient report said 20?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. No, I'd keep it.
COFFEY, Q.C.:
Q. Keep, okay, but if it was ten, like right on the line -
DR. NEIL:
A. If it was borderline, I'd send it.
COFFEY, Q.C.:
Q. Exhibit P-2230, please. Doctor, this is undated, but it refers to, is a cover letter, I take it for ER/PR cases for the year 1998.
DR. NEIL:

Page 283

A. Yes.
COFFEY, Q.C.:
Q. So, this would have been sent in this timeframe -
DR. NEIL:
A. Yes, it's my mistake, I didn't insert the date in that particular letter.
COFFEY, Q.C.:
Q. Exhibit -
DR. NEIL:
A. If you just stop there for a second.
COFFEY, Q.C.:
Q. Sure.
DR. NEIL:
A. Some examples of things that I would have kept are on that particular note. For instance, there is a diagnosis there, it says psuedoangiiomatous hyperplasia.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. Something I would not be sure of whether or not they wanted it or not, I would send it anyway.
COFFEY, Q.C.:

Page 284

Q. This is why--and you're highlighting this in a cover letter here.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. You concluded by saying, "Would you refer these to the panel of experts for decision on whether we need to do these".
DR. NEIL:
A. Yeah, I sent them the report.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. I was not sure what they wanted to do with it. I sent them the report and I would have expected the panel to say if they want it, they would have asked me for it.
COFFEY, Q.C.:
Q. Now this panel of experts you're referring to here is what?
DR. NEIL:
A. It was a panel that was set up by Eastern Health that included pathologists, oncologists, and several other people that would review particular patients and make

Page 285

clinical decisions based on the information that they had put before them.

COFFEY, Q.C.:

Q. Exhibit P-2246, please. Here, Doctor, in the middle of the page here is an e-mail of October 11th, 2005, from yourself to Dr. Jenkins saying, "We are almost complete, 2002 and 2000 are sent, 2001 and 2003 to go today. Hopefully, 2004 to go out tomorrow. 1997 to 1999 will be a little more time consuming since we are not on Meditec, but we are striving to get all done by weeks end, signed Paul", and if we could, Exhibit P-2247, on October 12th, 2005, you send in your 2003 cases.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Exhibit P-2248, October 13th, 2005, this is the covering letter for the 2004 cases?

DR. NEIL:

A. Uh-hm, yes.

COFFEY, Q.C.:

Q. If we could, please, Exhibit P-2250. Now, Doctor, here there's an e-mail of October

Page 286

13th, 2005, from yourself to S. Ryan, copied to Dr. Jenkins saying, "Hi Susan, as per our telephone conversation, I appreciate your help in retrieving the following data for Western Health concerning patients for repeat ER/PR testing as outlined by Eastern Health. We are required to send all the ER negative cases and primary breast lesions from May '97 to March 31 '04. We have been able to retrieve most from our Meditec System, however, in the early years we were on another pathology program which is not searchable. We require your help from May '97 to include the years '98 and '99", and this, I take it, is you were looking for this sort of information -- you were looking and then saying, "Please provide us with all patients with breast cancer diagnosed at that time -- in that time frame, by name and MCP". So this would be the Newfoundland Cancer Treatment Foundation?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. This is your request there, the third --

DR. NEIL:

Page 287

A. The third method to retrieve patients, yes.

COFFEY, Q.C.:

Q. How quickly did they get back to you with that, do you recall?

DR. NEIL:

A. It wasn't long, but I -- it wasn't long. I do believe the information is in my file and may be in yours.

COFFEY, Q.C.:

Q. Exhibit P-2251, please. I take it, October 13th, 2005, Doctor, this is an e-mail from Dr. Jenkins to the senior management group, copied to yourself, referring to a phone call from Pat Pilgrim referencing an expert panel.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. So this is this panel. That's when you were first told about the panel?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay, Exhibit P-2252, please, a letter of October 14th, 2005, the covering letter for the 2005 cases, Doctor?

Page 288

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Exhibit P-2253. This is a fax transmission from the Newfoundland Cancer Treatment and Research Foundation of October 14th, 2005. It's from Callista Silver?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. For Susan Ryan, and sending five pages, "re: sent as per your request. Enjoy the weekend", signed by herself, and I take it then that these are the patient's MCP numbers and names are redacted, but these are the 1997, 1998, 1999 cases?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Involving Western Memorial. Exhibit P-2254, please. Doctor, these are again some e-mails of October 18th and 21st. You write on October 18th to Dr. Jenkins, "As per our discussion, I spoke with Barry Dyer. He's indeed gathering an extensive amount of data

Page 289

on all cases from each region and will be producing results on spreadsheets for each region. I thought he would. As of now, the information is on paper, but when complete, all will be computerized. On the second point of our discussion, the one that really concerns me, Barry can also send us another list of patients that had IHC tests ordered from Western that we can cross-reference. He thinks that that list should be all inclusive. It looks like we have done all we can do. I'll keep you informed. Paul".

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. I take it by October 18th, and shortly, I gather, thereafter, looking at Mr. Dyer's list, that would be about it?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. In terms of identifying patients.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Page 290

Q. Doctor, this reference to a computerized list or database from Mr. Dyer, did you ever receive that?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Did you ever make any inquiries further as to --

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Where it was?

DR. NEIL:

A. I felt confident I had what I needed.

COFFEY, Q.C.:

Q. Oh, yes, and I -- it's just that he does reference the fact that he made --

DR. NEIL:

A. No, I didn't get it.

COFFEY, Q.C.:

Q. You didn't get it. Exhibit P-2255, please. This is the covering letter of October 24th, 2005, involving the 1997 cases being sent to St. John's?

DR. NEIL:

Page 291

A. Yes.

COFFEY, Q.C.:

Q. And Exhibit P-2257, please. This is a covering letter of October 27th, 2005, for the 1999 cases, and here, Doctor, you've written in the second paragraph, "This concludes our search", and you say, "you will notice always that there are notes attached to each patient's name and some are notes on reports. Some of these cases had to be sent with different block numbers as some are not in our files, and I suspect they are still in yours. To expedite the process of retesting, I selected another block containing tumour. I have sent all reports. If there are other blocks required, please let me know". I take it, Doctor, other than perhaps an occasional case, you weren't requested to identify any more blocks?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Okay. Exhibit P-2258, please.

COMMISSIONER:

Q. Mr. Coffey, we'll take the afternoon break

Page 292

wherever you can find a spot.

COFFEY, Q.C.:

Q. Yes, thank you, Commissioner. Just one or two other exhibits. Doctor, this is an e-mail of October 28th from Dr. Jenkins to yourself, it's copied to others. He says, "Hi Paul, thanks for the update and all the great efforts in attending promptly to this issue. We are referring patients with questions to the patient relations officer in St. John's and/or family doctors, who have been provided with the background info. We are also working with Eastern Health to confirm the mechanism for notification of the patients where the tissue samples are being retested. I wonder if Marilyn may be able to assist with the notification process. I'll have Helen arrange a meeting with her to discuss. Once again, my sincere thanks to everyone involved for their excellent efforts". Before -- below that, Doctor, on the 28th, you had sent an e-mail to -- response to Dr. Jenkins. You concluded by saying, "In that light, I've given a complete list of cases sent from here to Marilyn Saunders at the Cancer Clinic. She's received

Page 293

calls from patients wondering if their test has been sent out. As of today, she will be able to tell any patient when the tissue left here. I wonder where we should take this issue. Any thoughts? Paul". So, Doctor, what were you looking at there, what were you thinking about?

DR. NEIL:

A. Maybe this was another possible way to identify patients that we may have missed. Patients have direct contact with the Cancer Clinic, it's where they're treated, and there are people there that they know. If they had questions, that was the likely place for them to call. If I provided a list to Marilyn of patients that I had sent, she would be able to help these patients.

COFFEY, Q.C.:

Q. And who is she?

DR. NEIL:

A. She is -- I don't want to downgrade her position because I don't really know it, but I know she works in the Cancer Clinic.

COFFEY, Q.C.:

Q. In?

Page 294

DR. NEIL:

A. Corner Brook.

COFFEY, Q.C.:

Q. The Cancer Clinic in Corner Brook, and - because you had -- and I think to perhaps put this fully in context here, you begun your e-mail of the 28th by saying in cases for repeat ER/PR testing -- I'm sorry, "all cases for repeat ER/PR testing have been sent to HSC for retesting as requested. Last batch went yesterday, October 27th. We are confident that we've sent all the cases that we could identify and have been as thorough as we could possibly be. However, there is always the possibility we may have missed someone. We sincerely hope not. I don't know how HSC is handling that. Is that a PR issue?". I take it that's a public relations issue?

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. "Should patients that suspect that their tests should be repeated contact someone to ask that question", and then you go on.

DR. NEIL:

Page 295

A. That's where I got the idea of Marilyn. If anybody called her, she would know, yes, your test was sent; or, no, you're not on the list, maybe you should be.

COFFEY, Q.C.:

Q. Was that done, was the list given to her?

DR. NEIL:

A. Yes, the list was given to her I personally gave it to her.

COFFEY, Q.C.:

Q. Finally, Commissioner, P-2260. Doctor, this is a December 6, 2005 letter from yourself to Barry Dyer. You say, "As per your request, please find the enclosed list for ER/PR cases we have sent to you. These are copies of what we sent initially with the slides and blocks". I take it you were requested to send in a list of everything that you had sent?

DR. NEIL:

A. He had already had --

COFFEY, Q.C.:

Q. Yes, I appreciate that.

DR. NEIL:

A. But I resent it.

COFFEY, Q.C.:

Page 296

Q. You sent it?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Resent it again. Commissioner --

DR. NEIL:

A. As per his request.

COFFEY, Q.C.:

Q. Yeah, he had sent -- in the intervening time, there's a letter --

DR. NEIL:

A. I sent each year individually with a covering letter and a list of patients.

COFFEY, Q.C.:

Q. Yes.

DR. NEIL:

A. So he had what he was asking for, but he wanted it again.

COFFEY, Q.C.:

Q. He sent, I take it, a kind of form letter to yourself and others.

DR. NEIL:

A. Yeah, I think so.

COFFEY, Q.C.:

Q. Looking for kind of a complete list.

Page 297

DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. If we could, Commissioner. Thank you.
(RECESS)
COMMISSIONER:
Q. Mr. Coffey.
COFFEY, Q.C.:
Q. Thank you, Commissioner. If we could, please, Exhibit P-0046, please. Doctor, the Commissioner has seen this exhibit innumerable times now. It's a letter of October 17th, 2005, to Dr. Cook. It's from a Dr. Banerjee, who conducted an external quality review of the immunohistochemical service at Eastern Health. Doctor, were you aware that external reviewers had been asked by Eastern Health in September of -- to come in in September, 2005?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. When did you first become aware that that had happened?
DR. NEIL:
A. I guess as a result of the proceedings of this

Page 298

inquiry.
COFFEY, Q.C.:
Q. Doctor, did you ever receive any explanation from anyone at Eastern Health or connected with Eastern Health as to what had caused -- what the cause or causes of the ER/PR problem had been?
DR. NEIL:
A. Dr. Denic, as I mentioned earlier, did brief us.
COFFEY, Q.C.:
Q. Okay. So it was in Dr. Denic's time?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. As clinical chief?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay, I'll come to that shortly, but until that point, you did not receive explanation?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Exhibit P-1740, please? Doctor, these are

Page 299

handwritten notes of Dr. Cook, here at the bottom of the page here. One of them is November 1st, 2005, 9:15 a.m. "spoke to Dr. Paul Neil regarding the issuing of written report from Mount Sinai by me and how this would be directed to the lab director." Do you recall what that was about?
DR. NEIL:
A. "Issuing of written report from Mount Sinai." I can only speculate that this was concerning the reports that would come back from Mount Sinai to Dr. Cook and how he would report that Mount Sinai report to me.
COFFEY, Q.C.:
Q. Okay. If we could, please, Exhibit P-2261, please? Doctor, this is a fax cover sheet. It's from Judy, on behalf of Dr. Donald Cook, January 4th '06. It's to yourself. It's canned text for ER/PR.
DR. NEIL:
A. Um-hm.
COFFEY, Q.C.:
Q. It's two pages. Second page of the exhibit is a laboratory NPRHCC PTH canned text dictionary and I take it that then this is a suggested

Page 300

text as to how ER and PR that had been retested at Mount Sinai would be or could be reported?
DR. NEIL:
A. Yes, that's correct.
COFFEY, Q.C.:
Q. And if we could, please, Exhibit P-2262? Now had you requested this sort of format from him?
DR. NEIL:
A. Yes. I wanted to know how we were going to handle it, to report it, and that's what he sent.
COFFEY, Q.C.:
Q. And here, 2262, Doctor, is a memorandum to Shelley and Maureen from yourself, January 6th, 2006, ER/PR reporting, and you say "for ER/PR retested cases, use the following canned text" and "this case was referred to Mount Sinai for retesting of ER/PR status as part of Eastern Health's quality review process. The results from Mount Sinai are as follows: please correlate with the previous result. Note: please make sure this is used only for retest cases, i.e. that there should be a

Page 301

previous--i.e. there should be a previous addendum report with ER/PR result already done. Also record that we have this report returned from Mount Sinai in our ER/PR file." So I take it, Doctor, by the beginning of 2006, early '06, you were looking ahead to actually how we're enter this information?

DR. NEIL:

A. Yes, correct.

COFFEY, Q.C.:

Q. By that point, you understood that the results would probably be back when, the bulk of the results? Do you know if by then you had any sense of when -

DR. NEIL:

A. I didn't honestly know when they were coming.

COFFEY, Q.C.:

Q. Doctor, I take it because you had sent them in--by year, and we've looked at that.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. In the fall of '05, did you expect that the results would generally come back in like waves or a large wave?

Page 302

DR. NEIL:

A. I thought they would come back in waves, because I had sent them sort of in waves. But I'm only one place.

COFFEY, Q.C.:

Q. And in the meantime, just so the Commissioner understands for Corner Brook, because I take it the ongoing consult cases were being done from time--as the cases had to be ordered, ER/PR -

DR. NEIL:

A. The go-forward cases, yes.

COFFEY, Q.C.:

Q. - go-forward cases, yes. Were there any cases from Corner Brook, Doctor, which had to be--in the retest group, that had to be, as it were, pulled out of the queue or retested in the fall on an urgent basis, do you recall? Do you recall--I'm not suggesting there were, I'm just asking you, like after you'd sent these by year, retest cases, in large groups, were you ever asked to pull cases or an individual case, asked by an oncologist, for example, to pull a case -

DR. NEIL:

Page 303

A. No.

COFFEY, Q.C.:

Q. - and have it retested on an urgent basis?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. Now I wasn't personally. I don't know if anybody else was.

COFFEY, Q.C.:

Q. Yes, and if somebody in Western was, I take it generally you would have been aware of it?

DR. NEIL:

A. Not necessarily.

COFFEY, Q.C.:

Q. Okay, so they might approach another pathologist?

DR. NEIL:

A. If the secretary had knew who owned that particular case, she would approach that particular person. But I'm not--I don't think that happened, to be honest.

COFFEY, Q.C.:

Q. Now if we could, Exhibit P-0684? Now Doctor,

Page 304

this is an e-mail of November 24th, 2005. It's neither sent to nor did it originate from you, but this is an e-mail where Heather Predham is writing to Dr. Williams and copying others and she, in the body of it, says "Dr. Kwan made a suggestion at the last panel that I should track those we may have potentially harmed. We had agreed to classify patients as being converted with or without recommendations, but Dr. Kwan, and rightly so, felt it didn't accurately reflect those who had been impacted. For example, if a person was initially diagnosed with breast cancer in the left breast and was ER/PR negative and then had metastases to the right breast which was ER/PR positive, the patient would be then treated with Tamoxifen. So when we panelled the person after their first results converted, the panel would have no recommendations, but there has been a potential impact. At the last panel meeting, out of the 17 panelled, there were seven patients who were potentially negatively impacted. I will have to review all the patients panelled, but I'll try to have this

Page 305

complete information for you next week."

Now Doctor, the notion of trying to identify people who, as she puts it here, "we may--people who may--patients who may have potentially been harmed" -

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. - did that ever come up in Western?

DR. NEIL:

A. No, not to me.

COFFEY, Q.C.:

Q. Oh yes, and to your knowledge, has Western ever conducted any such analysis of its own patients?

DR. NEIL:

A. I don't know that. It's not my--that was not my mandate to be looking at patients directly.

COFFEY, Q.C.:

Q. I understand that, okay, but are you aware though of any that -

DR. NEIL:

A. No, I'm not.

COFFEY, Q.C.:

Q. Okay, that's what I was just asking. If such

Page 306

a--I take it that that would be an oncologist, treating physician's -

DR. NEIL:

A. An oncologist.

COFFEY, Q.C.:

Q. Or a surgeon?

DR. NEIL:

A. Yes, or a surgeon.

COFFEY, Q.C.:

Q. Do you know if Eastern Health has ever provided any such information to Western?

DR. NEIL:

A. I don't know.

COFFEY, Q.C.:

Q. Okay, not that you're aware of, I take it?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Exhibit P-2263, please, Registrar? Now Doctor, this is an e-mail of January 30th, 2006, from Dr. Jenkins to senior management and copied to yourself and others saying "I just had a call from Dr. Bob Williams. The ER/PR test results from Mount Sinai are back and I should be getting a call from Heather

Page 307

Predham today with the results for Western Region patients. We will be required to notify the patients with negative results. For those with positive results who are patients of the Cancer Clinic in St. John's, an expert panel in St. John's will review the results and provide advice to treating providers. For those with positive results who are not Cancer Clinic patients, it is anticipated that further clinical information will need to be provided so that the cases can be reviewed by the expert panel and advice provided. We will need to have some staffing supports to call the patients who are negative and advise attending physicians of the positive converters for whom further information is required. For Kelli and Bonnie Walker be made available to do this, or should I look elsewhere? Thanks, Ken Jenkins."

So I take it, Doctor, by--this is your notification at the end of January that the results are back?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Page 308

Q. Now, Doctor, as the senior pathologist in Western at the time, what was your job when the--I take it the results from the retesting came back in late January?

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. How did they come to you?

DR. NEIL:

A. On a spreadsheet.

COFFEY, Q.C.:

Q. Spreadsheet, and what was your responsibility and what did you do?

DR. NEIL:

A. I didn't know how the patients were going to be informed. I didn't know how the results were going to get to the physicians that were concerned. I later understood that reports would be coming back from Dr. Cook as we discussed. So the spreadsheet was for information purposes for me.

COFFEY, Q.C.:

Q. And because the spread--you were going to get individual--for each patient on the spreadsheet -

Page 309

DR. NEIL:
A. Yes, I was going to get an individual report to go into our system.
COFFEY, Q.C.:
Q. Individual report from Dr. Cook?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And it would come from Dr. Cook?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. On Eastern Health letterhead or some sort?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Reporting what was in the spreadsheet?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And your responsibility was to take that and ensure that got into Corner Brook's Meditec?
DR. NEIL:
A. Yes, correct.
COFFEY, Q.C.:

Page 310

Q. And that was done?
DR. NEIL:
A. That was done.
COFFEY, Q.C.:
Q. Doctor, now the spreadsheets came to you for informational purposes then bearing in mind that individual reports were going to come.
DR. NEIL:
A. Um-hm.
COFFEY, Q.C.:
Q. What did you use the spreadsheets for?
DR. NEIL:
A. I reviewed the spreadsheets to see--Dr. Mullen had a fair amount of information on them, reviewed the spreadsheet to see what he had commented on the specimen adequacy, commented on internal controls. Of course, he gave us the results. I briefly scanned the results to see what conversions there were and just to get a general idea of the problem, and I would try to correlate if there was any discrepancy in our diagnosis and his diagnosis.
COFFEY, Q.C.:
Q. The underlying diagnosis itself?
DR. NEIL:

Page 311

A. Yes, the underlying diagnosis. In that spreadsheet, there was a Mount Sinai diagnosis and a Western diagnosis. There was a Western ER/PR result and there was a Mount Sinai ER/PR result.
COFFEY, Q.C.:
Q. And now Doctor, you understood that Dr. Mullen, in sending back that--or that spreadsheet, I take it, the portion of his spreadsheet that you got was limited to Western?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay, Western patients. You understood Dr. Mullen had reviewed what, in creating that spreadsheet? Did you have any understanding as to whether he'd reviewed the original slides?
DR. NEIL:
A. No, I didn't.
COFFEY, Q.C.:
Q. One way or the other? Or you just didn't--or you thought he hadn't or -
DR. NEIL:

Page 312

A. No, the original slides, I didn't think he had the original slides.
COFFEY, Q.C.:
Q. Okay. To your knowledge they had been sent to St. John's -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And that was as far as they gone?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Exhibit--before I leave that, did you do any analysis of the information in the spreadsheet at any time?
DR. NEIL:
A. Statistical analysis?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Now about, without getting into the statistics of it, kind of analysis from which you could draw just general conclusions about -

Page 313

DR. NEIL:
A. Apart from eyeballing the spreadsheet and making a general assessment? No.
COFFEY, Q.C.:
Q. If any analysis or statistical analysis was to be conducted -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And this is the beginning of 2006, who did you understand it might be conducted by?
DR. NEIL:
A. Eastern Health.
COFFEY, Q.C.:
Q. Did you ever have any discussions with Eastern Health about that?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. About whether or not they were doing it?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. To this day do you know if there was any statistical analysis?

Page 314

DR. NEIL:
A. I'm sure there are all kinds of statistics. I know there are all kinds of statistics. I didn't do them.
COFFEY, Q.C.:
Q. Doctor, as an individual physician, have you looked, like in looking at the spreadsheets or any information you had, have you been able to identify which of the patients were retesting might have been your patients?
DR. NEIL:
A. My own particularly?
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. In terms of the--did you ever prepare that sort of data at any point in time?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay, Corner Brook was, from your perspective, was viewed as a group?
DR. NEIL:

Page 315

A. Corner Brook was a group. Fair number of physicians at that -
COFFEY, Q.C.:
Q. Yes, and you've pointed that out that over the years there would be quite a number who--any one physician who was in Corner Brook for two or three years would have had a number of ER/PRs?
DR. NEIL:
A. Certainly had a number of them, yes.
COFFEY, Q.C.:
Q. And statistically, some of them would have had negative result originally -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And that would result in a retesting.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. So there'd be results there. Exhibit P-1976 please? Now, Doctor, this is a memo of February 1st, 2006, again. You head the list this time, up here, it's to the various pathologists throughout Newfoundland, from Dr.

Page 316

Cook. He says, "We have received most of the results from Mount Sinai regarding ER/PR review process. Results from Mount Sinai were issued on Excel spreadsheets. I will be issuing individual reports on patients and submitting these to the respective sites. When you see these reports, please ensure they're incorporated into your hospital information or laboratory information systems. I expect you will be receiving the first of these reports within the next two weeks." And in fact, he's handwritten here "spoke to Gary Baker, February 9 and Paul, Wednesday, February 10, ensuring they got my memo." When did in fact you get the reports, those individual reports on the retest reports? Do you recall when generally it was?
DR. NEIL:
A. We were getting them in batches. They came at various times. Can I put a date on the first one? No, I can't really.
COFFEY, Q.C.:
Q. And how about on the last, as it were? Like over what time -
DR. NEIL:

Page 317

A. They came over a long--a fairly wide timeframe.
COFFEY, Q.C.:
Q. Period of months, weeks?
DR. NEIL:
A. Probably a month.
COFFEY, Q.C.:
Q. A month or so.
DR. NEIL:
A. Probably a month or so, yes, five to six weeks maybe.
COFFEY, Q.C.:
Q. Doctor, in the meantime, what was going on with respect to notifying patients, do you know, in terms of how were they--the phone calls?
DR. NEIL:
A. That was being handled outside of my department.
COFFEY, Q.C.:
Q. And were they utilizing the spreadsheet that had been sent to you, like the patients who came back zero zero?
DR. NEIL:
A. I believe that's--not in my spreadsheet, that

Page 318

spreadsheet was e-mailed, of course, and I'm sure that senior management had a similar copy to mine.
COFFEY, Q.C.:
Q. And we'll be talking--so Dr. Jenkins would be involved in that?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. We'll be speaking with him. Exhibit P-2266 please? Now, here Doctor, as order of March 6, 2006, you've written here to Dr. Laing, "As per Eastern Health ER/PR recall protocol, please find the enclosed patient report on the above-mentioned patient who was seen in Cleveland Clinic and has, according to our hospital records, been taking Tamoxifen. Her ER was reported as negative. In our review of cases for retesting, she was not sent since she was seen at Cleveland Clinic. It has come to my attention that she was not in fact retested there. I am sending you this report wondering if in fact she needs to be retested since she is apparently taking Tamoxifen. Could you please advise me if we need to send

Page 319

a tissue to Mount Sinai or not." Do you recall what has happened with respect to this patient's--was this retested, Doctor?
DR. NEIL:
A. That was retested.
COFFEY, Q.C.:
Q. Retested.
DR. NEIL:
A. Mr. Coffey, there are several letters that you have that are directly related to requests and conversations that I have had with physicians regarding particular patients.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. And that's exactly what they're about. I wouldn't want particular patients to come up.
COFFEY, Q.C.:
Q. And you'll see here the patient's name is not -
DR. NEIL:
A. I know the patient's name won't come up, but patient's history may be written in some of those letters.
COFFEY, Q.C.:

Page 320

Q. And there might be particular enough to identify a patient, I take it is what you're getting at.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, on this point and what I'll ask you about is this, why would you be writing to Dr. Laing?
DR. NEIL:
A. She was the oncologist that was looking after the patients.
COFFEY, Q.C.:
Q. This patient or patients generally?
DR. NEIL:
A. I don't know if that patient particularly was seeing Dr. Laing.
COFFEY, Q.C.:
Q. And in terms of--because up to this point in the process, had you been dealing with Dr. Laing concerning this ER/PR matter -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Okay, in what context were you dealing with

Page 321

her?
DR. NEIL:
A. I do believe that she was in charge of the oncology program.
COFFEY, Q.C.:
Q. Yes. No, I'm asking you in terms of the ER/PR matter, the retest matter, had you been dealing with her in relation to the ER/PR retesting process?
DR. NEIL:
A. Apart from an occasional letter, I hadn't been dealing with her particularly because I've letters there written to Dr. Ganguly as well, who I believe was on a panel.
COFFEY, Q.C.:
Q. So the involvement you would have had with Dr. Ganguly or Dr. Laing in relation to the ER/PR retesting -
DR. NEIL:
A. Yes, are specific patient issues.
COFFEY, Q.C.:
Q. Okay, specific patients.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:

Page 322

Q. As opposed to kind of the systemic approach to how we're going to do this, how we're going to -
DR. NEIL:
A. These are specific patient issues that I wanted clarified in order to do the particular follow up on these patients. I wanted to know what to do with their report, their test, did it need to be retested? There were certain clinical situations that I was unclear about that any of these oncologists could assist me with that procedure, that's why I wrote to them.
COFFEY, Q.C.:
Q. Doctor, how did the issue come to your attention?
DR. NEIL:
A. Which issue?
COFFEY, Q.C.:
Q. The issue involved in this particular letter and the idea that -
DR. NEIL:
A. This particular letter, again, this is a patient issue and I'd rather not discuss that.
COFFEY, Q.C.:

Page 323

Q. Well how would you know that her ER was reported negative? I mean, what I'm trying to get at here, Doctor, she doesn't get into the queue -
DR. NEIL:
A. She should have been in the queue, okay.
COFFEY, Q.C.:
Q. Okay, that's what I'm--that's what I'm interested in, is that aspect of it. So they came to your attention that she was not in the queue.
DR. NEIL:
A. Yes, she should have been in the queue.
COFFEY, Q.C.:
Q. Okay, and you made inquiries?
DR. NEIL:
A. Yes. And I dealt with it.
COFFEY, Q.C.:
Q. And I had asked you this earlier, did this patient self identify?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay. Now you do say here that she was not sent, since she was seen at Cleveland Clinic.

Page 324

Now, Doctor, with respect to that, because you have told the Commissioner that in looking through and identifying patients, bearing in mind the criteria Eastern Health had given you, that you went through the--before sending them to St. John's and some of them you marked "keep".
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And, of course, one of the criteria would be that they, or not, you know, they're right on the borderline, the ten percent is a good example you used, this Cleveland Clinic, was that used as a criterion not to send blocks?
DR. NEIL:
A. There's information about--there's a couple of people about Cleveland Clinic.
COFFEY, Q.C.:
Q. Okay, and they were not sent, I take it, in the initial round for retesting?
DR. NEIL:
A. No, no.
COFFEY, Q.C.:
Q. Was there anything and again, I don't want to

Page 325

identify the patients and -
DR. NEIL:
A. We're getting close to it.
COFFEY, Q.C.:
Q. But you should know, Doctor, you should be aware here, okay, that there have been references here to, over 30 patients from Newfoundland over a certain period of time are sent for testing or some sort of treatment to the Cleveland Clinic. So, did anyone--what I want to ask you about is this, the utilization of a criteria that a patient had visited the Cleveland Clinic -
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And you use that as an exclusionary, initially, exclusionary determination, the idea for that, was that your own or -
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay, so that came from someone else. And without--if it came from the patient, I'm not -

Page 326

DR. NEIL:
A. It didn't come from the patient, I really can't answer your questions.
MR. SIMMONS:
Q. Commissioner, I might have missed it, but I didn't hear Dr. Neil say earlier that the Cleveland Clinic was an exclusionary criterion, I understood it had something to -
DR. NEIL:
A. It had something to do with it, yes. It's not an exclusion. I know you're confused, but I'm not, I know these patients.
THE COMMISSIONER:
Q. Mr. Browne, I'm just wondering do you want five minutes to see if we can work this out?
MR. BROWNE:
Q. Sure.
THE COMMISSIONER:
Q. Why don't we do that.
(RECESS)
THE COMMISSIONER:
Q. Please be seated. Mr. Coffey.
COFFEY, Q.C.:
Q. Yes, Commissioner, Mr. Browne and myself have had a discussion, I don't believe there will

Page 327

be a problem with me asking a couple of questions and -
THE COMMISSIONER:
Q. Well I'm sure Mr. Browne will tell us if you get into trouble.
COFFEY, Q.C.:
Q. Thank you. Doctor, P-2266, just on the matter of, because you've indicated that certainly when all the patients' names had been initially identified, as best you could, it's a long list.
DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. Cross checking them and so on, you referred to the fact that, well one of the criteria was the patient was still alive, so you excluded the deceased patients when you were able to identify them. This particular patient, there's a reference here to "She was not sent, since she was seen at Cleveland Clinic."
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. I take it was that, the decision not to send

Page 328

the block to St. John's or a block to St. John's was your decision in relation to that patient.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And I take it, Doctor, that was because--well I'll ask you this, did you understand that the patient's tissue, ER/PR, had been done in St. John's at all at that point?
DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Okay, you understood it had been done where?
DR. NEIL:
A. I had understood it was done in Cleveland.
COFFEY, Q.C.:
Q. Oh in Cleveland, okay, and accordingly the retesting was not of Cleveland's materials -
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. It was of St. John's -
DR. NEIL:
A. St. John's material.

Page 329

COFFEY, Q.C.:
Q. And therefore, it wouldn't be sent off for retesting.
DR. NEIL:
A. It wouldn't make sense to send it.
COFFEY, Q.C.:
Q. Then, Doctor, in the lead up to this letter of March 6th, 2006, I take it you do say here that it has come to your attention that she was not in fact retested there?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. That is retested -
DR. NEIL:
A. At Cleveland.
COFFEY, Q.C.:
Q. - in Cleveland, in fact, it wasn't so much retested as tested at all in Cleveland.
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. Doctor, do you recall how that came about, that you became aware that -
DR. NEIL:

Page 330

A. No.
COFFEY, Q.C.:
Q. Okay, you just -
DR. NEIL:
A. I can't be specific on how I knew that information.
COFFEY, Q.C.:
Q. But it came to our attention that this particular patient had not been tested at all in Cleveland, first nor last?
DR. NEIL:
A. Correct.
COFFEY, Q.C.:
Q. And with that in mind, you then learned, because you indicated that the patient was already on Tamoxifen, did you learn whether or not the patient had been tested at St. John's at all?
DR. NEIL:
A. She was tested at St. John's.
COFFEY, Q.C.:
Q. Okay, you became aware of that.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:

Page 331

Q. And then, by that point I take it, she now met the criteria potentially for retesting.
DR. NEIL:
A. And she was sent as a retest; hence the reason for this letter.
COFFEY, Q.C.:
Q. Okay. I think, does that make it, Commissioner, clear, the process?
THE COMMISSIONER:
Q. Clear why she then had to be sent, yes.
COFFEY, Q.C.:
Q. Yes. Exhibit P-1591 please? Doctor, this is an e-mail from yourself to, March 29th, 2006, to a D. Boone of Health West, Newfoundland.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. I take it this D. Boone is whom?
DR. NEIL:
A. One of our lab managers, who predates the current one, he was in charge of pathology at the time.
COFFEY, Q.C.:
Q. I just raise it because D. Boone, Dan Boone, it's not the Dan -

Page 332

DR. NEIL:
A. It's not Dan Boone.
COFFEY, Q.C.:
Q. It's not Dan Boone, okay, thank you. And, but the e-mail below, the main e-mail is from Nash Denic, the same date to a number of individuals, including yourself. And it says, "There has been some confusion from the Cancer Clinic who the reports from Mount Sinai Hospital should go to, therefore, the Cancer Clinic will be sending a letter to all pathology lab directors outlining the directions how the ER/PR, HER2/neu reports from the Mount Sinai Hospital should be handled. In the meantime, if you have questions, you can call Dr. Joy McCarthy"--and her particular number. What was this about, Doctor, do you recall?
DR. NEIL:
A. The Cancer Clinic wanted reports directly from Mount Sinai to avoid any typing errors.
COFFEY, Q.C.:
Q. Transposition errors.
DR. NEIL:
A. Transcribing errors, to see a copy of the

Page 333

report directly from Mount Sinai would mean that there were no transcribing errors.

COFFEY, Q.C.:

Q. So was this on the retest results, as well as current cases, I take it or just the retests?

DR. NEIL:

A. From my perspective it was the go-forward cases.

COFFEY, Q.C.:

Q. Okay, that's the current cases, I take it?

DR. NEIL:

A. Current cases, so I guess, you know, the reports and I don't know how they came back from Mount Sinai to Eastern Health, I'm sure they came back in the same manner. Before Dr. Cook would transcribe them into his format, I guess the Cancer Clinic would get a copy before that happened, which I'm sure was the case.

COFFEY, Q.C.:

Q. So how did you address this at Western?

DR. NEIL:

A. We did what was asked.

COFFEY, Q.C.:

Q. If we could, please, Exhibit P-1811 please?

Page 334

Now, Doctor, before we leave the beginning of 2006, this is an e-mail from Brendan Mullen, Friday, January 20th to Dr. Donald Cook. It's attaching the ER/PR results for the Newfoundland and Labrador retrospective review and then he says, he concludes by saying, "When you have had an opportunity"--that is Dr. Cook has had an opportunity--"to review the results, I would like to discuss some of the technical difficulties we encountered with processing and staining of specimens, some of the same issues are present in the current Newfoundland and Labrador material."

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. Those three lines there, these three, was Dr. Mullen's comment in January of '06 ever brought to your attention?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Exhibit P-2267 please? Now, Doctor, this is a letter of April 3rd, 2006. I take it it's on Western Health letterhead. It's a letter that

Page 335

you would have sent to Dr. Ganguly?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And you begin by saying, "As part of the ER/PR recall, Dr. Don Cook has sent me a list of patients for me to follow up based on results of the Mount Sinai retesting." And then there's a number of individual patients referred to and their particular circumstances.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. And this is a redacted version. Doctor, what occasioned this at this point in time, I mean, this sort of a process?

DR. NEIL:

A. This is a reconciliation of what's on the spreadsheet.

COFFEY, Q.C.:

Q. Okay. And if there was any discrepancy of what was on the spreadsheet with the Mount Sinai diagnosis and our diagnosis, it had to be dealt with, and these patients and several

Page 336

other subsequent letters dealt with that type of issue.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. I was seeking opinions from various specialists as to how to handle them.

COFFEY, Q.C.:

Q. And at times, there are letters, were there also phone calls between yourself and Dr. Cook about these sorts of matters?

DR. NEIL:

A. There were phone calls but the main focus was written letters because it's clear when you write it down what it is you're asking.

COFFEY, Q.C.:

Q. Exhibit P-2269, please, and Doctor, here there is a--this is a letter from yourself, I gather, June 19th, 2006, to Dr. Cook, and you write "after our discussion this morning, I have reviewed the list of patients below. You will note they are the same as the group I wrote you about in April." And there are a number of--in fact, there are seven patients on this particular letter referred to.

Page 337

Doctor, on some of these patients there are references to--and the Commissioner has heard otherwise about this--DCIS that Mount Sinai had reported as DCIS.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And then, of course, the question arose as to, I gather from these patients in the main, they had been diagnosed as invasive carcinoma of one sort or another.

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Ductal invasive carcinoma, and I take it inquiries were made in that regard. Could you tell generally how that matter--tell the Commissioner how the DCIS was handled from Western's perspective?

DR. NEIL:

A. There were probably about 20 or so patients that had the diagnosis of DCIS from the Mount Sinai spreadsheet. We were to try to resolve the issue of DCIS on a Mount Sinai diagnosis with a Western diagnosis which differed and it

Page 338

differed by degree, in the sense that DCIS was in situ or within the duct, the invasive component as a minor component outside of the duct. It's still a cancer. The DCIS were not retested for ER/PR by definition, but the invasive cancers are retested. So there's a discrepancy. We had to try to resolve that discrepancy and treat the patient appropriately. Those discrepancies were resolved through individual patient review and individual slide review--or not slide review, individual consultation, because I never did receive the slides. I did correlate my diagnosis or Western's diagnosis with Mount Sinai diagnosis and did resolve the issues to the best of our ability. So these patients were treated appropriately after my investigation. Some of these letters are the result or are the mechanism whereby I would try to resolve those issues.

COFFEY, Q.C.:

Q. And Doctor, here, if we could just look, please, Registrar, at 2270, please? Because your letter was dated June 19th and this is a letter from Dr. Cook to yourself of June 26th

Page 339

acknowledging receipt of your letter, that is the letter dated June 19th, and he says "we will be going through the list of patients that you have forwarded to us." He's also "forwarding this information to Heather Predham who's involved with Quality Initiatives and with our panelling process on the Tumour Board Committee," and he refers then to two particular items two and three on your letter, and he says "I will keep you updated on the remaining patients. I deeply apologize for not getting back to you earlier." So I take it that this then, then as the summer of 2006 went on, got addressed?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Doctor, Exhibit P-2274, please? This is a letter of August 7th, 2006. It's from yourself to Dr. Laing and Doctor, without occasioning the need for another break again -

DR. NEIL:

A. This is the same patient.

COFFEY, Q.C.:

Q. Same patient?

Page 340

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay, I just wanted to ask you about that. It came up back in March?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And you're still looking for--that's why I referred to it again. This is August 7th. This is about four or five months later and -

DR. NEIL:

A. So I sent the tissue anyway, when I discussed it with Dr. Laing. She has been retested at Mount Sinai, sent directly from our hospital.

COFFEY, Q.C.:

Q. So you conclude here by saying "as per your instructions," Dr. Laing's, "I will send her tissue for retesting at Mount Sinai." So the matter that you first raised in March finally did get addressed in August?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And you've indicated here, you received Dr.

Page 341

Laing's phone message on your return from vacation. Doctor, what had been the delay? Had it been on your part or Dr. Laing's, because there's about a four -

DR. NEIL:

A. I don't know.

COFFEY, Q.C.:

Q. You don't recall. Because you had written Dr. Laing looking for information?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And there's no two ways about it.

DR. NEIL:

A. Yes, I don't know what the delay was.

COFFEY, Q.C.:

Q. Okay.

DR. NEIL:

A. I'm sure one or both of us may have been on vacation, but I don't know the answer to that.

COFFEY, Q.C.:

Q. If we could, please, Exhibit P-2275? Doctor, this is a series of e-mails but the first one at the bottom of the page here is October 30, 2006. It's from Nancy Parsons to Heather

Page 342

Predham. She says "Hi, Heather. Dr. Neil, Paul Neil called back. He said" redacted "was not retested because she is deceased and they have not been given any instructions to retest any deceased patients. He is willing to send this lady's sample for retesting if we wish, but someone has to let him know. I will call 'blank' back and tell him that we did not yet retest her sample." So Doctor, this is October '06.

DR. NEIL:

A. Um-hm.

COFFEY, Q.C.:

Q. What was the situation as of that point, in terms of the deceased patients?

DR. NEIL:

A. We had no instructions to send back deceased patients.

COFFEY, Q.C.:

Q. And I take it this was a particular request that arose?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay. Doctor, did you become aware that

Page 343

Eastern Health had, in respect of the deceased patients, obtained an ethics consult? Were you made aware in 2006?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Were you aware until I just mentioned it to you now?

DR. NEIL:

A. No.

COFFEY, Q.C.:

Q. Okay, just this is the first you've become aware of it?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay. Exhibit P-1198, please? If I could, please, just before we go to that--I apologize, Commissioner, Exhibit P-2104? Now Doctor, these are notes of Dr. Cook of a conversation. He says he "spoke to Paul Neil July 14th 2006. Paul wishes to review any discrepancy in DCIS himself with his pathologists and disclose themselves. Will review his 20 odd DCIS and compare with

Page 344

original pathology report to confirm DCIS. I asked him to send in his pathology reports on confirmed DCIS." And so this--he goes on from there. I've referred you to this already. So this is that process that you've described to the Commissioner?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay, began around that time and then went on through the summer?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. Okay. Exhibit 1198. Doctor, this is an e-mail of November 17th, 2006, involving a video conference for November 20th, 2006, and we look at the second page of it -- actually, video conference sites have been set up to view Dr. Denic's presentation from the main auditorium on ER/PR testing as follows, and refers to Corner Brook Hospital audio visual theatre?

DR. NEIL:

A. Yes.

Page 345

COFFEY, Q.C.:
Q. Right there. I take it that -- and amongst others, you're there as a contact person?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. How did you come to be aware of this ER/PR presentation, Doctor, and what if any involvement did you have in it? Did you participate?
DR. NEIL:
A. I'm sure this must have been the one -- I have some notes that I made concerning the results that Nash was to present. I'm sure this was the video conference that I attended.
COFFEY, Q.C.:
Q. Okay. You had --
DR. NEIL:
A. Was it a video conference or an audio conference?
COFFEY, Q.C.:
Q. This is video according to this one.
DR. NEIL:
A. I don't recall -- I don't recall it video.
COFFEY, Q.C.:

Page 346

Q. Because there is an audio conference -- a conference call in May of '07, and I'll be referring to that in a moment, but the video conference that occurred in the fall of 2006, you don't recall?
DR. NEIL:
A. I have a -- I have a summary document there somewhere that describes what Nash -- the results that Nash had. I'm assuming this is the same one.
COFFEY, Q.C.:
Q. Okay, do you have that readily available there, Doctor?
DR. NEIL:
A. Pardon me?
COFFEY, Q.C.:
Q. Do you have that readily available there?
DR. NEIL:
A. No. It's in my own handwriting.
COMMISSIONER:
Q. You don't know where that is, do you, Mr. Simmons?
MR. SIMMONS:
Q. No, Commissioner, I don't.
COFFEY, Q.C.:

Page 347

Q. There is -- some material is dated and some is not. It would be very difficult to -- do you recall the time frame, Doctor?
DR. NEIL:
A. No. That's why I was trying to see what I had written.
COFFEY, Q.C.:
Q. Okay.
DR. NEIL:
A. And I don't even know if I dated it.
COMMISSIONER:
Q. Mr. Coffey, it's near the end of the day, in any event.
COFFEY, Q.C.:
Q. Perhaps I'll go on and we'll come back to that and to conclude with -- and cover that in the morning, Doctor. In the meantime, Doctor, in terms of -- we understand that in November of 2006, there was a large video conference presentation involving a number of physicians; Dr. Carter, Dr. Denic, Dr. Elms, and there were a number, anyway, involved in it. Do you recall participating in that? This would have had slideshow, the whole works.
DR. NEIL:

Page 348

A. Yes, it comes back to me now, yes. It's not -- and I didn't make notes on that. That was the first -- that was another one.
COFFEY, Q.C.:
Q. I appreciate -- that's what I thought.
DR. NEIL:
A. That was another one. That's why I had to go back to the video.
COFFEY, Q.C.:
Q. So there was a video with slideshows --
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And so on and so forth.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. How did you come to take part in that? Were you just offered it at the time, these e-mails and --
DR. NEIL:
A. These e-mails came out. I do remember that now.
COFFEY, Q.C.:
Q. And at the time, what's your recollection in

Page 349

terms of your overall impression of it?
DR. NEIL:
A. Considering it was hard for me to remember I had been there --
COFFEY, Q.C.:
Q. Okay, I appreciate that, yeah.
DR. NEIL:
A. There was a lot of work that had been done, and Dr. Elms had a lot of material that he presented. He seemed to know what he was talking about. They were looking to reinstate, I think, the ER/PR at that time.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. They were looking to get our support for that.
COFFEY, Q.C.:
Q. And at that point in time, I take it, correspondingly around that -- before that or around that time, there were concerns expressed about their manpower issue?
DR. NEIL:
A. Yes, that's right, right.
COFFEY, Q.C.:
Q. Doctor, at that point were you actually asked

Page 350

at that point to send the material in to Eastern Health?
DR. NEIL:
A. We were asked to send it back, yes.
COFFEY, Q.C.:
Q. Back around the time they were re-instituting the service?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And who asked you, do you recall?
DR. NEIL:
A. Dr. Denic.
COFFEY, Q.C.:
Q. And what did you tell him?
DR. NEIL:
A. I wasn't ready to do it.
COFFEY, Q.C.:
Q. And did you explain why?
DR. NEIL:
A. I explained why.
COFFEY, Q.C.:
Q. Which is the -- with the exception of the reference to the Commission --
DR. NEIL:

Page 351

A. Yes, I explained why.
COFFEY, Q.C.:
Q. You explained what you told us this morning?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. Did you get a copy of the slide presentation? Did anybody offer to send that to you?
DR. NEIL:
A. I don't have a copy, and I don't recall if anybody offered to send me a copy.
COFFEY, Q.C.:
Q. Exhibit P-2276, please. Doctor, this is a letter of March 23rd, 2007. It's from Dr. Denic to Barry Dyer, and he's -- he writes, "This is to inform you that we've received all the slides and blocks that we referred to Mount Sinai for retesting on ER/PR and HER2/neu. It is my recommendation that we retain all glass slides from the test performed and return all paraffin blocks to the labs of origin. This decision was made based on a request from one of the sites, Corner Brook, by Dr. Paul Neil, for the blocks to be returned". I refer you to this because

Page 352

there's a reference to you having made a request.
DR. NEIL:
A. Uh-hm.
COFFEY, Q.C.:
Q. So you had asked Dr. Denic to do what here?
DR. NEIL:
A. Send us back our material.
COFFEY, Q.C.:
Q. And that would be the blocks?
DR. NEIL:
A. Yeah.
COFFEY, Q.C.:
Q. And I take it, did you also -- were you also looking for the original ER and PR slides?
DR. NEIL:
A. I was looking for all of our material back. Once they were finished with it, I wanted it back.
COFFEY, Q.C.:
Q. And so what did you actually get back?
DR. NEIL:
A. Nothing.
COFFEY, Q.C.:
Q. Have you gotten even the blocks back yet?

Page 353

DR. NEIL:
A. No.
COFFEY, Q.C.:
Q. Have you made any inquiries since March of ’07 about it?
DR. NEIL:
A. No, because I was told the blocks were going to stay there until the inquiry was done.
COFFEY, Q.C.:
Q. Okay, so by the time -- the inquiry was announced in May of ’07, so I take it that you didn’t insist on it between the end of March and the end of May?
DR. NEIL:
A. No. As long as I know where they are, and they’re in a safe place.
COFFEY, Q.C.:
Q. Okay. Exhibit P-2277. Whose handwriting is this, Doctor, do you know?
DR. NEIL:
A. Just scan down a bit --
COFFEY, Q.C.:
Q. There it is.
DR. NEIL:
A. I think it’s Ken Jenkins.

Page 354

COFFEY, Q.C.:
Q. Okay, so it’s -- if we could, please, Exhibit P-2278. Now, Doctor, a couple of e-mails of May 24th, 2007. The first of them is from Heidi Simmons to Ken Jenkins, and it says, "Ken, the Western Star has called today wondering how many of our patients were involved in the ER/PR issue, and how many would have had an incorrect treatment as a result, and how many have since died. When you have a few minutes to discuss", signed Heidi. Dr. Jenkins then responds saying, "I’m away most of the next two weeks. As of tomorrow morning, Helen has my file. Bonnie Walker has detailed knowledge of the numbers. It may be best to ask Paul Neil to respond to this request in my absence". Were you asked to respond?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And did you do so?
DR. NEIL:
A. No.
COFFEY, Q.C.:

Page 355

Q. Okay, and -- this was the request of Western Health set out here? You were asked to respond to that?
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. That’s the request we’re talking about here.
DR. NEIL:
A. Yes.
COFFEY, Q.C.:
Q. And did you discuss -- what were you asked to do and what did you tell the person who asked you?
DR. NEIL:
A. I was not in the business of disclosure.
COFFEY, Q.C.:
Q. Yes.
DR. NEIL:
A. I did what I was asked to do. Disclosure was not my issue. Someone else in the senior team would do that.
COFFEY, Q.C.:
Q. And do you recall who within your own organization asked you, Doctor?
DR. NEIL:

Page 356

A. Probably Heidi.
COFFEY, Q.C.:
Q. And her position is what?
DR. NEIL:
A. She’s the communication director.
COFFEY, Q.C.:
Q. Okay. And so Doctor Jenkins, when it was conveyed to you, you said, thanks, but no thanks, that’s not my -
DR. NEIL:
A. Thanks, but no thanks, not my role.
COFFEY, Q.C.:
Q. If we could, please, Exhibit P-2279. Now Doctor, this is an exhibit of July 11, 2007 and it’s a memo of some sort of Dr. Jenkins re: 1 p.m phone call and compiling of all documentation. "I flagged the summary, 1995 - 2005 from Dr. Neil and also the individual yearly stats. And re: this summary report from Bonnie Walker re: people contacted, this is not in the file. Bonnie notes she has this and will bring with her" and so on. And it continues toward the bottom of the memo, as well, I now have a file of info from Dennis Boone, Dr. Neil’s office and from the lab

Page 357

stenos all on my desk". Doctor, what was this about? What summary and what information did you provide here?

DR. NEIL:

A. Oops, I want to get the date.

COFFEY, Q.C.:

Q. It's July 11th, I'm sorry, Doctor.

DR. NEIL:

A. July 11th?

COFFEY, Q.C.:

Q. Yes, 2007.

DR. NEIL:

A. I referred to an ER/PR file this morning or this afternoon.

COFFEY, Q.C.:

Q. Yes.

COFFEY, Q.C.:

Q. Any information that was in that which you have is what is referred to that came from my office.

COFFEY, Q.C.:

Q. Okay. So, you passed that on to -

DR. NEIL:

A. Every bit of information that I had.

COFFEY, Q.C.:

Page 358

Q. Now, in this context, to put this in context as to what else was going on at the time, Doctor, if we could look please, Registrar at P-2280. And Doctor, this is a letter from Ken Jenkins, it's copied to Ms. Gillam and yourself. It's addressed to Don MacDonald, July 13th, 2007, it's re: ER/PR testing and patient notification, Western Health. And he says, "further to our telephone discussion of July 11th, please find enclosed the copies of the reports and related documents that you requested. Our regional director of laboratory services has made contact with Dr. Neil, our chief of pathology, regarding pathology summary report. The reference to report on the table refers to cases where it is uncertain whether tissue blocks need to be submitted in accordance with the criteria for the review. Tissue samples related to "these reports" were submitted as requested by Eastern Health. As well, please note that there are some variation in the total number of the pathology summary, 249 verses the total number in the final summary. As reflected in the enclosed table dated July 12, 2007, actual

Page 359

total is 254 and all cases are accounted for from a patient contact perspective. Do not hesitate to contact me should you have any questions." Now, Doctor Neil, I take it that because the Commission had been established by this point and there was some effort by the Newfoundland and Labrador Centre for Health Information to compile a database.

DR. NEIL:

A. Uh-hm.

COFFEY, Q.C.:

Q. You would have been made aware of that?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. What, if anything, was your role on behalf of Western in that regard, in terms of providing information to NLCHI or the Don MacDonald and company?

DR. NEIL:

A. Any information I had with patients was directed through Dr. Jenkins to Mr. MacDonald, as per his request. The pathology summary reports that are being talked about there are the spreadsheets that I referred to earlier

Page 360

with the patient name, surgical number, Mount Sinai report, number of ER/PR slides, and the handwritten notes that I had on the right-hand side. Those are some of the pathology summary reports.

COFFEY, Q.C.:

Q. That's the ones you're talking about.

THE COMMISSIONER:

Q. Mr. Coffey, it's 5:05, it might be cruel and unusual punishment to push it much further today. That's just a gentle hint, Mr. Coffey.

COFFEY, Q.C.:

Q. Well before I take the hint, if I could, one last one, I'll push it just a bit, just one exhibit, Doctor, while we're on the topic, P-1036 please? Doctor, this is a letter of October 30th, 2007, I take it from yourself to Susan Gillam, your CEO?

DR. NEIL:

A. Yes.

COFFEY, Q.C.:

Q. And it's ER/PR request of October 29th, 2007 and you say, "Please find attached our review data on the cases you requested in your correspondence from Robert Thompson, October

Page 361

29th. As you will see, patients listed with corresponding information on their retest status. As you will realize, some were not retested, several do not meet the retest criteria for percent cut off, while others did not meet the criteria for primary breast lesion or the original request criteria from Eastern Health. We have detailed comments for each case and have included as much information for each as we have. If deemed necessary, please feel free to have the clinical information further reviewed by the panel to ensure we have not missed anyone inappropriately. Also note that we will send one case of"--redacted name--"that was not sent previously. She had been repeated before on left breast but later was on a right breast, so we will repeat. Furthermore, there are two cases which we believe are not from Western Health. These have been identified in the comments. As for the second list of four patients, we have results of three, but do not expect result from"--blank--"due to the nature of the lesion. Notification of these results should have been through Cancer Clinic or

Page 362

Bonnie Walker." And you refer Ms. Gillam to others if she has any questions. So I take it, Doctor, that as of the end of October, 2007, you were providing what was requested of you to Mr. Thompson and company.

COFFEY, Q.C.:

Q. Yes.

COFFEY, Q.C.:

Q. Thank you, Commissioner.

THE COMMISSIONER:

Q. All right then, we'll adjourn until tomorrow morning, 9:30, thank you.

Page 363

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 10th day of July, 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 10th day of July, A.D., 2008

Judy Moss

-B-

-D-

-E-

-F-

-O-

-Q-